



THE SOLICITORS' JOURNAL

CURRENT TOPICS

Capital Punishment and the Bill of Rights

LORD GODDARD showed his usual courage in the Lords debate on the second reading of the Homicide Bill in pointing to the resemblance between the suspending power of the Crown, declared illegal by the Bill of Rights, and the statement in 1947 by the then Home Secretary that he proposed to recommend a reprieve in all cases. He did so, said Lord Goddard, until the House of Lords refused to accept the clause inserted in the Criminal Justice Bill abolishing capital punishment. Lord Goddard referred to the announcement by the Home Secretary, when the Silverman Bill went through the Commons, that he would consider every case with regard to its circumstances, including the circumstance that the Commons had voted for the Silverman Bill, and said that if the dispensing power was exercised in every case it became the suspending power. What Lord Goddard stressed was the embarrassing position in which this placed judges "who have to administer the law as it is." One of his examples of what had taken place was some recent advice by a judge in sentencing to death a convicted murderer that he need not consider that there was any possibility of a reprieve. "But," said Lord Goddard, "there was a reprieve." The answer of LORD SALISBURY, denying any constitutional impropriety and saying that there would be no difficulty of this sort once the Bill became an Act, did not seem convincing in the face of Lord Goddard's statement that since the Bill had passed the Commons there had been cases which, if the Bill had been law, would have been capital offences, but they had been the subject of reprieves.

Nonstare Decisis

THIS week the Court of Criminal Appeal once more overruled itself. In *R. v. Hallam* (*The Times*, 26th February), the decision was that it was a necessary ingredient of the offence of knowingly possessing an explosive substance otherwise than for a lawful object under s. 4 (1) of the Explosive Substances Act, 1883, that the accused must know that the substance in question was an explosive one. By the application of the proviso to another s. 4 (1) (of the Criminal Appeal Act, 1907), the court refrained from interfering with the appellant's conviction, being of the opinion that no miscarriage of justice had occurred. But the court held that it was a misdirection to say that it was not necessary to show that the appellant knew the articles in his possession were explosives if the jury were satisfied that he knew he had articles which in the event were explosives. Now the direction thus

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criticised was completely in accordance with *R. v. Dacey* [1939] 2 All E.R. 641, a decision of the Criminal Appeal Court on the same subsection, and on this account *R. v. Hallam* had been adjourned for argument before a full court of five judges. It was in *R. v. Taylor* [1950] 2 K.B. 368 that this willingness of the Court of Criminal Appeal to reconsider its own previous rulings first came to prominence. There LORD GODDARD, C.J., recalled that other appellate courts were usually bound by their own decisions, "but this court has to deal with the liberty of the subject and if, on re-consideration, in the opinion of a full court, the law has been either misapplied or misunderstood and a man has been sentenced for an offence, it will be the duty of the court to consider whether he has been properly convicted. The practice observed in civil cases ought not to be applied in such a case."

Speculation and the Rent Bill

SPECULATORS moving into the property market in the hope of making quick profits on the passing of the Rent Bill will find difficulties in their way, if an amendment to cl. 9 passed by the Standing Committee of the House of Commons on 20th February, against the advice of the MINISTER OF HOUSING AND LOCAL GOVERNMENT, becomes law. The amendment provides that all houses bought after 7th November, 1956, which would otherwise be freed from control will remain subject to control. Sir IAN HOROBIN, proposing the amendment, said that there were a few speculators operating. They were undesirable persons, who did not intend to stop in the market long. The Minister expressed sympathy with the amendment but said it was indiscriminate. He said that he was considering what could be done by way of eliminating opportunities for borrowing, particularly where small sums were concerned, and although his mind was not closed to altering the Bill on the report stage, he intended to do all he could by administrative action to close the available sources of money. The problem, which the department has very little time to solve, is how to prevent speculators without impeding legitimate dealings.

What Is an "Affray"?

THE passer-by may find it difficult to distinguish whether a street fight is an indictable affray, an ordinary fisticuff bout, a private duel or a legitimate use of self-defence. The LORD CHIEF JUSTICE succeeded, in his judgment in *R. v. Sharp* and *R. v. Johnson* on 15th February (*The Times*, 16th February) in showing where the distinctions lie. Coke said that an "affray" is a public offence to the terror of the King's subjects. Just as the mere wearing of a sword would have been no evidence of an affray in the days when it was a common accoutrement of the nobility, but the carrying of a studded mace or battle-axe might be, his lordship said that if two lads indulged in a fight with fists no one would dignify that as an affray, whereas if they used broken bottles or knuckledusters a jury might well find that it was, as a passer-by might be upset and frightened by such conduct. One of the accused had pleaded self-defence, although he had used a razor, and the Court of Criminal Appeal quashed the conviction because the Recorder had directed the jury that the defence was immaterial, although the story might have been rejected by the jury as extravagant. Acting within their powers as justices of the peace the court bound over the appellants to keep the peace for twelve months.

Box Camera Photographs and Dangerous Driving

THE box-type camera is not the last word in scientific invention, but the evidence which it provided in a recent prosecution for dangerous driving apparently proved acceptable to the court. In an appeal heard at Middlesex Quarter Sessions on 20th February, photographs taken with a box camera mounted on a moving police car were criticised by counsel for the appellant as "misleading" and "completely useless." A professional photographer said that the lens produced a false perspective and vehicles appeared to be closer together than they really were. The box camera was not suitable for taking action photographs from a moving car. In the absence of a full report it is impossible to say whether or not the "snaps" played a major part in the case, but the appeal was dismissed in spite of the criticisms of counsel. Although the box camera seems to have achieved its purpose, it is to be hoped that the evidence of the professional photographer will be heeded as a valid general criticism of such evidence, and that the police will in future be more up to date in their methods.

Solicitors' Remuneration Order, 1956

IN our issue of 1st December last year (100 SOL. J. 863) we reported the annulment by the House of Commons of the Solicitors' Remuneration Order, 1956, which was designed to bring solicitors' costs on compulsory acquisitions into line with those in other cases. In our issue of 10th November (100 SOL. J. 808) we welcomed this Order and we adhere to the views we then expressed. The annulment of the Order on 26th November was followed by correspondence between Sir EDWIN HERBERT and Mr. ROBERT JENKINS, M.P., which Sir HAROLD BANWELL, the Secretary of the Association of Municipal Corporations, has now asked us to publish, and the two letters in question will be found on p. 204 of this issue.

The Expert Witness

WHEN in doubt whether to put their clients to the cost of calling an expert witness, solicitors often finally decide in favour of this course, rather on what might be called the "atom bomb" principle, that the other side will have one. The experts on both sides may turn out to be only damp squibs, but honour, and presumably the client, will have been satisfied. An article in the December, 1956, issue of *Arbitration* by Mr. ELLIOTT FITZGIBBON goes so far as to say: "No judge nor arbitrator nor inspector with much experience will ever concede anything to a so-called expert witness—as such. He has seen too many of them." This startling generalisation appears to ignore the fact that the judge has no means of knowing whether, for instance, a roof is properly repaired unless a builder tells him what is the proper method of repair. Indeed, judges are sometimes heard to bemoan the absence of expert evidence. What the writer was seeking to convey, however, was that there are "plausible bluffers" or "bogus experts" who must be contrasted with the real expert; the former obscure the issue, the latter illuminates it. The distinction can be admitted, but it is doubtful whether there is any sharp dividing line between the sheep and the goats. The wise judge will be grateful for any assistance he can get, and will bear in mind that it is the expert's duty to emphasise the scientific arguments in favour of the party who employs him.

THE MAGISTRATES' COURTS BILL

THE Lord Chancellor has introduced this Bill into the House of Lords to give effect to the recommendation of the Departmental Committee on the Summary Trial of Minor Offences, whose report was issued in July, 1955. It contains a provision that it shall come into force two months after the Royal Assent and presumably it will have been passed by the end of July. The reasons for the Bill will be obvious to anyone who visits a magistrates' court in a large town. Many policemen will be seen there waiting to give evidence in minor traffic cases, like obstruction; there will seldom be any denial of such charges and frequently the defendant will not be at court. Under the present law, if the defendant does not attend and plead guilty, the case against him must be proved by sworn evidence. A letter from him admitting his guilt will not suffice unless the handwriting is proved to be his, which can seldom be done; moreover, the letter or form from him will hardly ever contain sufficient details of the offence for the court to decide on an appropriate penalty, e.g., an admission that he exceeded the speed limit in Hyde Park will scarcely satisfy a magistrate who wishes to know whether the excess was 10 or 30 m.p.h. over the limit. Perhaps a digression may be permitted here to comment on the contrast between admissions in reply to a summons, which will seldom be detailed or say much about the facts, and admissions in a "voluntary statement" to a police officer investigating a more serious charge. These statements, which, of course, are entirely spontaneous and are never given in reply to questions by the officer, sometimes read like a model answer to a question, say, as to what facts must be proved to sustain a charge of burglary and larceny. At one assizes, it is said, a Pole appeared on a charge of defrauding the Post Office Savings Bank; his command of English was obviously poor but he had made a voluntary statement at the end of which he had said: "I undertake to reimburse His Majesty's Postmaster-General to the full extent of my defalcations."

Clause 1 of the Bill will allow a person accused of an offence which is not triable on indictment or which is not punishable summarily with more than three months' imprisonment to plead guilty without appearing before the court. (The new procedure will not apply to persons arrested.) To enable this to be done, he will have to be served, when he receives the summons, with a notice of the effect of pleading guilty by letter and a concise statement of the facts of the charge to be placed before the court; if the clerk of the court subsequently receives written notification that the accused desires to plead guilty without attending court, the court can then proceed without any evidence and without the prosecutor's presence. The court has a discretion whether or not to proceed on this written plea and may adjourn, if it thinks fit, and have evidence called. Normally, however, the court will deal with the case on the basis of the statement of facts, a copy of which will be before the magistrates. Restrictions are placed on the power of arresting a defendant who has pleaded guilty in writing and no person may be sentenced to imprisonment or detention or be ordered to be disqualified unless there has been an adjournment to allow him to attend. The Bill makes in addition provision as to orders for payment of National Insurance contributions being made in the defendant's absence. It also extends the power to give written evidence by allowing a written admission by a defendant that he was the driver of a vehicle to be accepted as proof of that fact when that information has been required of him by post pursuant to the Road Traffic Act, 1930, s. 113 (3). At present, while written

evidence that he was the driver may be given under the Criminal Justice Act, 1948, s. 41, in a certificate signed by a constable, the latter must have personally interviewed the defendant; under the Bill, the interview will be unnecessary. The new provision will only apply, however, to offences not mentioned in Sched. IV to the Road Traffic Act, 1956, which will considerably restrict the scope of the clause in question. Schedule IV indicates the many offences for which endorsement and disqualification may be imposed.

Evidence of previous convictions

The Bill also provides that a person accused of an offence triable summarily may be served, not less than seven days before the hearing, with a list of his previous convictions for summary offences and that the court may then, on the hearing of the case and in his absence, take account of such convictions, after he has been found guilty. At present, previous convictions are not mentioned in most magistrates' courts when the defendant is absent, because he might not in fact have those convictions, there having been cases of confusion of identity between persons of the same name. The term "offence triable summarily" here includes offences triable summarily or on indictment, e.g., dangerous driving, but not offences mentioned in Sched. I to the Magistrates' Courts Act, 1952 (e.g., larceny, false pretences, receiving, unlawful wounding), and the previous convictions which may be mentioned in the defendant's absence likewise will not include any for offences mentioned in Sched. I or for offences triable only on indictment.

The Departmental Committee's recommendations

The Bill follows in the main the committee's recommendations but does not extend the new procedure to juvenile courts, although the committee had suggested that it should apply not only to adults but also to defendants in the fourteen to sixteen age groups. It also contains some rather complicated restrictions on the power to arrest an absent defendant, which were not recommended by the committee. It does nothing, of course, to restrict a defendant's right to appear and contest the case, and it allows him to withdraw a written admission which he may have sent to the court. The passing of the Bill will lead to a great saving of policemen's time, as they will no longer be required to attend to prove some minor offence when the defendant has intimated that he admits it. The amount of time which the court has to spend on each case will also be reduced because all that need be read aloud is the statement of facts and no swearing of witnesses nor ponderous statements about "having occasion to stop the defendant" or about how "the speedometer was tested over the measured mile and found to be correct" will be necessary. Let us hope that no political crisis brought about by lack of oil supplies will cause the premature death of a Bill introduced to ease the difficulties which an adequacy of oil had previously caused for courts and police.

Advance notice of the prosecutor's case

Presumably courts and prosecutors will not use the new procedure for summary offences of a serious nature, such as those under the Vagrancy Act, 1824, s. 4 (indecent exposure, loitering with intent to commit a felony, and being in a house or enclosed yard, etc., for an unlawful purpose), or under the Criminal Justice Administration Act, 1914, s. 14 (wilful damage not exceeding £20). It has sometimes been argued that the position of an innocent man accused of such an

offence is a difficult one, because he has to go to court to meet a case of which he may know nothing till the witnesses start to give their evidence (see the *Journal of Criminal Law*, July, 1953, p. 289). If the offence is one for which he may claim trial by jury, the prosecutor's case will be revealed to him in the depositions, if he wishes to be notified in advance of it, and there will be sufficient time to seek witnesses in rebuttal and to consider the proper line of defence and the matters of law involved. And now, if the offence is a trivial one, he will have a "concise statement of the facts" in advance which, while not as full as depositions, at least gives some information about what he is supposed to have done. In the intermediate cases mentioned above, presumably he will not get this concise statement of the facts, because of the gravity of the charge, nor will he be able to elect to be tried by jury. A man may therefore find himself summoned or arrested for a charge under the Vagrancy Act, conviction for which can mean ruin for him, and both he and his solicitor will have only the scantiest knowledge of what is going to be given in evidence against him. Certainly, if important questions to the witnesses

for the prosecution are overlooked or witnesses for the defence are not seen in time, or points of law are not taken because they are forgotten in the rush of the proceedings in court, the matter can be put right on an appeal to quarter sessions, but it would be better if the accused had never been convicted at all. The revelation of the Crown case in the depositions has been a feature of English procedure for more than a century, and one does not recall much complaint by the police that this has led to tampering with Crown witnesses or the invention of bogus alibis, etc. If those who have committed indecent assaults or broken into houses or committed damage to an amount of £21 or more have the advantage of depositions, why should it be denied to those who, it is alleged, have dreamed ignoble deeds rather than done them by indecently exposing themselves or loitering with intent to break into a house or who have committed but twenty pounds' worth of damage? Even the man accused in civil proceedings of adultery must have some particulars of what the evidence will be; surely the man who has done something for which he may be imprisoned is entitled to similar information.

G. S. W.

AN UNUSUAL PETITION

A PETITION of a most unusual type in connection with the costs of an appeal came before the Judicial Committee of the Privy Council on 22nd January last, when counsel for the petitioner, an appellant who had been unsuccessful on the merits in a recent appeal to the Board and had been ordered to pay two-thirds of the respondent's costs of the appeal, stated that the petitioner believed that an arrangement had been entered into before the hearing of the appeal between the respondent company, its solicitors and a third party which was a stranger to the proceedings but was concerned to maintain the judgment appealed from, whereby the respondent should not be liable for fees of counsel. What the petitioner wanted to know, said counsel, was whether any such agreement had been entered into, for if it had, there were authorities to show that there was no liability on the party ordered to pay costs for that particular item of costs. Those authorities—*Grundy v. Sainsbury* [1910] 1 K.B. 645 and *Adams v. London Improved Motor, etc.* [1921] 1 K.B. 495—supported the following propositions: (1) Party and party costs were awarded in the nature of an indemnity to the successful party. (2) If, for any reason, the successful party was under no liability to pay his solicitor any costs, he could not recover any costs from his opponent. (3) That principle applied equally to a particular item of costs as it did to the whole costs. (4) In particular, if the solicitor agreed not to charge the client with counsel's fees or to look only to some third party for payment of those fees, and the opponent in

the litigation was ordered to pay costs generally, he could not be charged with that item.

He was not suggesting, said counsel, that there was anything improper in the fact, if it were the fact, that some outside interest had financed the appeal; there was no suggestion that it was a maintained action. While, however, he was not in a position to say that there had been the agreement alleged, he submitted that there was substantial evidence that someone other than the respondent did in fact pay at least counsel's fees, and though there had been a specific denial of any agreement, that appeared in only one sentence in an affidavit, and he wished to be given an opportunity of examining material witnesses. The matter, concluded counsel, was of some importance because the items in question ran into some thousands of pounds, and he asked the Board to exercise its very wide powers under s. 8 of the Judicial Committee Act of 1833 and to refer the matter back for investigation to the registrar of the court from which the appeal came. If the petitioner was unable to establish any agreement, added counsel, and he acknowledged that the burden on the petitioner was very heavy, the respondent had the safeguard of costs. In the result the Judicial Committee, without calling on counsel for the respondent, said that the motion must be refused, and, in accordance with their almost invariable practice in the case of petitions, they gave no reasons for their decision.

C. C.

"THE SOLICITORS' JOURNAL," 28th FEBRUARY, 1857

On the 28th February, 1857, THE SOLICITORS' JOURNAL in commenting on the appointment of a new Master of the Queen's Bench, said that "it is impossible to deceive attorneys as to the competency of a newly-appointed Master for the duty of taxing a bill of costs. An official of this rank has neither voluminous robes and wig, nor obsequious attendants, nor exalted dignity to confuse our perception of his inexperience. Nor can a taxing master, like a Lord Chancellor, relieve himself of a painful responsibility by affirming a previous decision or by reserving judgment and privately obtaining the assistance of more experienced men. He decides in the first instance and he has, in a single morning, to consider and dispose of, not one only,

but a score or more of questions upon each of which probably he never expended one moment's thought before. It is, of course, impossible for any unpractised intellect, however able, either to do such work as this when first appointed or even to impose upon those around him by a decent pretence of doing so. If a newly-created master had the faculties of Hardwicke, Mansfield and Eldon combined . . . he could not decide a single disputed item of a bill of costs unless he was familiar with the scales of fees and with the rules of practice. Nor can it be conceived as possible that any barrister, however diligent, should make himself familiar with this branch of legal learning until he actually felt a direct personal interest in doing so."

LEVEL CROSSING ACCIDENTS

SINCE the first railroads were built in the last century few types of accident have led to litigation with such regularity as those which have occurred at railway level crossings. In each reported case including the most recent, *Lloyds Bank, Ltd. v. British Transport Commission* [1956] 1 W.L.R. 1279; 100 SOL. J. 748, it has been emphasised that each case depends essentially on its own particular facts; but one is tempted to think that almost every possible combination of circumstance has now been before the courts—so that there is legal precedent for any future accident.

It is well to remember, however, that many of the old cases are misleading—either because they were tried before juries for whom any shred of evidence was enough to justify a finding against the wealthy companies, or because they were tried before the Contributory Negligence Act permitted the courts to take a more kindly view of a careless plaintiff. Moreover, in cases of this kind such endlessly variable factors as the plaintiff's knowledge of the crossing (*Davey v. L. & S. W. Rly.* (1883), L.R. 12 Q.B. 70) or the engine-driver's familiarity with the line (*Smith v. L.M.S.* [1948] S.C. 125) can be all important: equally, of course, any evidence of increased user of the crossing or of previous accidents there can be critical; see, for example *Lloyds Bank, Ltd. v. Railway Executive* [1952] 1 All E.R. 1248.

Broadly speaking, liability can attach to the railway company for one of three reasons: breach of one or other of the statutory duties imposed on them, "personal" negligence arising from a faulty mode of operation of the railway and, finally, vicarious liability for the negligence of their servants—usually the engine-driver and fireman.

Statutory duties

The statutory duties of a railway company in this context are set out (as well as in certain private Acts) in the Railways Clauses Consolidation Act, 1845. Detailed requirements are there laid down, in ss. 47, 61 and 68, as to the provision and maintenance of fences, stiles and gates—and in certain cases of people to control them. The distinction between the three sections is made clear by Phillimore, J., in *Parkinson v. Garstang & Knott End Rly.* [1910] 1 K.B. 615: s. 68 deals with the provision of accommodation works for the benefit of owners and occupiers of land adjacent to the railway; s. 47 creates a duty towards all the public where a railway crosses a turnpike or public carriage road; and s. 61 is concerned with those intermediate cases where the crossing is over less important thoroughfares—bridleways or footways. It should be noticed that the obligations under this or any other statute are to be ascertained by determining the status of the crossing as at the date when the crossing was constructed: *Copps v. Payne* [1950] 1 K.B. 611.

Common-law duty

The classic statement of the railway's common-law duty was enunciated by Mellor, J., in *Cliff v. Midland Rly.* (1870), L.R. 5 Q.B. 258, at p. 261: "The company are bound, as to the

mode of working their railway, as to the rate of speed, and signalling or whistling, or other ordinary precautions in the working of a railway, to do everything which is reasonably necessary to secure the safety of persons who have to cross the railway." There is one consideration, however, which calls for an increased standard of care: if there is some "special feature" about the lay-out or construction of a crossing "which prevents persons passing over the line from taking care of themselves, and exposes them to greater peril than is ordinarily incident to a crossing" (*per* Lush, J., in *Cliff's* case, *supra*) then the railway company is called upon to take special precautions. Special dangers such as, for example, a restricted view of the line from the crossing or its approaches would call for extra care—in the form of warning notices, whistle boards, light signals and even watchmen. Finally, as has already been stated, the company's knowledge of increased user or of previous accidents can operate to raise their proper standard of care.

Vicarious liability

Apart from their liability for the management of the railway there remains to consider the company's vicarious liability for the negligence of their servants controlling the trains. It was at one time suggested that their position, as well as that of a road user approaching the crossing, should be considered in exactly the same way as that of any motorist approaching a cross-roads: *R. v. Broad* [1915] A.C. 1110. But the cases have increasingly recognised the special difficulties of manœuvring a train; Tucker, J., as he then was, stated in *Knight v. G.W.R.* [1943] K.B. 105, for example, that an engine-driver did not have to travel, when approaching a crossing in a fog, within the limits of his vision. It would not be right, he thought, to apply the same tests as one would to the driver of a vehicle on the highway.

In the most recent case (*Lloyd's Bank, Ltd. v. British Transport Commission, supra*) a fatal accident occurred at a little-used crossing; no breach of statutory duty was alleged and the Court of Appeal affirmed Lynskey, J.'s conclusion that the defendants had not failed in their duty with respect to the management of the railway. They also went on to exonerate the engine-driver and fireman from any negligence. As it was put by Morris, L.J.: "The driving of a train and the driving of a motor car are two quite different things. A train has priority on its track; it is being driven on a fixed track; it is normally expected to proceed to a time schedule," and by Denning, L.J.: "The driver and fireman might quite reasonably assume that people who approach a crossing will look out for trains. Even if the driver sees . . . a car, he would assume reasonably that the car would . . . stop for the train to go through."

Let Bramwell, B., have the last word (from *Walker v. Midland Rly.* (1866), 14 L.T. 796): "There is always a presumption that a train is coming on a railway"—and, may one add, that it is not going to stop.

R. E. G. H.

Mr. A. J. A. HANHART, O.B.E., solicitor, has been appointed secretary to the Royal Automobile Club and manager of its associate section.

Mr. NORMAN HARPER has been appointed chairman of the Agricultural Land Tribunal for the Northern Area in succession to Major G. D. Anderson, who has retired.

Mrs. M. B. HUGHES has been appointed assistant solicitor in the Clerk's department of the Caernarvonshire County Council.

Mr. E. G. THOMAS, deputy Town Clerk of Loughborough, has been appointed Town Clerk of Rawtenstall, Lancashire.

Mr. W. B. WOLFE, senior assistant solicitor to Stockport Corporation, has been appointed deputy Town Clerk of Darwen.

SIMULTANEOUS CONVEYANCE AND MORTGAGE

THE much discussed credit squeeze has increased the difficulty of a purchaser who requires to raise a substantial proportion of the purchase money by mortgage. It seems that, as a result, the practice of mortgaging back to the vendor is becoming more common, particularly where the purchaser is the sitting tenant. Precedents combining both conveyance and mortgage in one deed have long been known, and simple forms designed for use, for instance, on sale of a house, are published by the Solicitors' Law Stationery Society, Ltd.; Con. 15 G and 15 H apply respectively to freehold and leasehold property, and Con. 15 F is a draft form applicable to either.

We have been asked whether these forms involve a simultaneous conveyance and mortgage and, if so, whether they purport to carry out the transactions in a manner which was shown to be impossible by the decision in *Church of England Building Society v. Piskor* [1954] Ch. 553. That decision was concerned with the conflict of rights between a tenant and a mortgagee where a purchaser has created a tenancy between the date of the contract and of completion. Before completion a tenant whose interest is created in that way does not obtain a legal estate because the purchaser has an equitable interest only and so cannot pass more than an equitable interest to the tenant. Nevertheless, it was decided in *Church of England Building Society v. Piskor* that "immediately on execution of the conveyance to the purchaser a legal tenancy by estoppel arises in favour of the tenant and so takes effect prior to the mortgage and becomes binding on the mortgagee . . . This is so even if the conveyance and mortgage form substantially one transaction and bear the same date" (Emmet on Title, 14th ed., vol. II, p. 241).

No new principle

This decision indicates that, where separate documents are used, even if they are executed together, there is a period of time between conveyance and mortgage during which an estoppel may operate in favour of a tenant. It has been suggested that the necessity for lapse of time between the two transactions might invalidate a document which purports by one clause to convey the legal estate to a purchaser and by another clause to charge that legal estate by way of legal mortgage back to the vendor. Can the one document, delivered at one moment, deal in two ways with the same legal estate? In our view there is no real doubt but that such a deed operates in the manner intended. Precedents for

reservation of mortgage terms on conveyances and assents made in favour of persons beneficially entitled to settled land are well known and we do not think that the *Church of England Building Society* case, or any similar decision, introduces any new principle. Further, reservations of easements, rent-charges, etc., are made very frequently and we can see no distinction in principle from the reservation to a vendor of a mortgage term or the creation of a charge by way of legal mortgage.

A well established practice

It is of no importance to the vendor or purchaser to decide whether the clauses of conveyance and mortgage operate simultaneously or in turn. On the other hand, this issue may be relevant in deciding whether a tenancy purported to be created by the purchaser before completion is binding on the mortgagee. If there is a moment of time between the operation of the two clauses the estoppel in favour of the tenant may slip through the gap. We would be inclined to the view that the gap must exist even if conveyance and mortgage are in one document on the ground that, as Romer, L.J., reasoned in the *Church of England Building Society* case, unless a sequence of events is observed, the mortgage is ineffective to achieve its purpose. Admittedly, by arguing in this way, we are begging the question, posed earlier, as to whether the mortgage is effective when contained in the same document as the conveyance, but the practice of drawing such dual-purpose documents seems so well established that we do not think there can be any reasonable doubt. It is, perhaps, significant to note that writers who have endeavoured to suggest how a mortgagee may be protected against the danger that a tenancy granted before completion may be binding on him have not, so far as we know, recommended that the combination of conveyance and mortgage in one document would itself be adequate. Published advice on the point seems to have been that the single deed should be drafted in such a way that the vendor first demises to the mortgagee and then conveys to the purchaser subject to the mortgage. See, for instance, Emmet on Title, 14th ed., vol. II, p. 242. Apparently, it is assumed that to avoid the risk of a period of time between conveyance and mortgage, which may operate, to the disadvantage of the mortgagee, the only safe course is to express the mortgage to take effect first.

S.

DEVELOPMENT PLAN

CITY OF EXETER DEVELOPMENT PLAN Amendment No. 1 (South Street), 1957

This amendment to the above development plan was on 31st January, 1957, submitted to the Minister of Housing and Local Government for approval. This amendment relates to land near South Street, Exeter. A certified copy of the amendment to the plan as submitted for approval has been deposited for public inspection at the City Planning Office, No. 21 Southernhay West, Exeter. The copy of the plan so deposited is available for inspection free of charge by all persons interested at the place mentioned above between the hours of 10 a.m. and 12 noon, and 3 p.m. and 5 p.m. Mondays to Fridays, and from 10 a.m. to 12 noon on Saturdays. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 25th March, 1957, and any such objection or

representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Exeter City Council by notice in writing to the Town Clerk, No. 10 Southernhay West, Exeter, and will then be entitled to receive notice of the eventual approval of the amended plan. Forms for this purpose may be obtained from the Town Clerk or City Planning Officer at the above addresses.

The Ministry of Housing and Local Government have compiled another Bulletin of Selected Appeal Decisions (under the Town and Country Planning Act, 1947): No. XII, January, 1957, published by H.M.S.O., price 1s. 4d. net. The last bulletin was published in September, 1952, and the present selection is of appeal decisions given since then.

Landlord and Tenant Notebook

CLAUSE 9 OF THE RENT BILL

"RELEASE from control under Rent Acts" is the heading to the above clause, which has given rise to a considerable amount of discussion in the Press, in professional circles, over the air and at public meetings. The first sub-clause ran: "The Rent Acts shall not apply to any dwelling-house the rateable value of which on 7th November, 1956, exceeded, in the Metropolitan Police District or the City of London, £40, elsewhere in England or Wales £30, and in Scotland £40." Discussion is not possible without reference to the proposals for a period of grace to be found in Sched. IV; on decontrol becoming effective "the tenant . . . shall be entitled to retain possession of the dwelling-house until such date as may be specified in a notice served on him by the landlord, at or after the time of decontrol, being a date not earlier than six months after the service of the notice . . ."

There are various ways in which the proposal could be amended so as to meet, or partly to meet, the wishes and demands of those who consider it too drastic. Most suggestions, so far, have been of two kinds: increase the rateable value figures, lengthen the period of grace. The Royal Institution of Chartered Surveyors put forward an ingenious suggestion of the latter kind, which was referred to in our "Current Topics" on 26th January last, the root idea being that the period of grace should be one in which landlord and tenant could negotiate new tenancies. And this idea has, as stated in our opening "Current Topic" in our last issue, found favour in the Minister's eyes, the proposal now being to make the period of grace fifteen months.

But another suggestion, made in "Current Topics" on 12th January, is that of differentiation by reference to locality, which could prevent much of the apprehended hardship; and when one finds politicians who are not opposed to decontrol in principle objecting to the clause as it stands because of the effect it may have on conditions in their particular constituencies, it is fair to assume that the idea merits examination.

Anomalies

One may be pretty sure that those objecting to this suggestion would make free use of the expression "anomaly," it being assumed that all anomalies are evils. But while there are many anomalies which ought not to have been created or ought to be removed, a more useful division would be into those which can and those which cannot, from a practical point of view, be avoided. For, as Lord Reid said when interpreting s. 11 of the Landlord and Tenant (Rent Control) Act, 1949, in *Preston and Area Rent Tribunal v. Pickavance* [1953] A.C. 562: "So far as I can see the only substantial objection to this interpretation is that it gives rise to serious anomalies in the application of the Act, but the respondent's interpretation gives rise to others hardly less substantial, and anomalies are inevitable under a scheme which, etc. . . ."

Boundaries

All unitary States divide their territories into districts, if only for administrative purposes; and some of the anomalies resulting from differences in administrative measures are unobjectionable. The pleasure of walking down Chancery Lane, for instance, is rather enhanced by the variety in design, if not in efficiency, of its street-lighting apparatus; no fewer than three local authorities are responsible for

lighting different stretches of the short thoroughfare. (Very occasionally the results are outshone by private enterprise, namely when The Law Society uses all the means of illumination at its disposal.)

It is rather when *legislation* differentiates that anomalies attract adverse criticism; and anyone who has had the experience of travelling from Chester to Hawarden by train on a Sunday evening may appreciate the point, which is likely to have been brought home to him by the condition of some of his fellow-travellers (holding return tickets), refugees from the Sabbath dryness of Flintshire. It is, perhaps, not without significance that cl. 9 (1) speaks of "England or Wales," not of "England and Wales."

Plausible arguments can be advanced for the removal (one way or the other) of such an anomaly; and, when it comes to housing and landlord-and-tenant matters, this might well apply to such a state of affairs as was illustrated by *Leslie Maurice & Co., Ltd. v. Willesden Corporation* [1953] 2 W.L.R. 892; 97 Sol. J. 298 (C.A.), which showed that the Middlesex County Council had succeeded in getting a statute passed containing special tests for Housing Act standards of fitness and of reasonable expense (see Landlord and Tenant Notebook for 9th May, 1953; 97 Sol. J. 328). This anomaly has since been dealt with by the Housing Repairs and Rents Act, 1954, s. 9 (3) (b); but it is fair to say that it was partly a case of England—and Wales—thinking to-day what Middlesex had thought yesterday.

Inevitable anomalies

Differences between the law of Middlesex and that of the rest of the country, between that of England and that of Wales, are, of course, trivial compared with differences between English and Scots law, of which the Union with Scotland Act, 1706, abolished but a few, expressly preserving others. Fortunately there are no customs barriers to be surmounted, nor do we need travellers' cheques when crossing the Border; but common-law differences remain, some statutes do and others do not apply to Scotland, and few people would have it otherwise. Occasionally differences are modified without complete assimilation being effected; it was an unromantic Legislature that, by passing the Marriage (Scotland) Act, 1939, deprived (after some postponement) Gretna Green of one of its distinctive features.

But, as far as housing is concerned, it can be said that Parliament has for a long time faced the facts that land costs more in one place than in another, that the cost of building identical dwellings varies accordingly, and that the shortage of dwellings is more acute in one part of the country than another. Not only rent restriction legislation, but Housing Acts have indulged in geographical differentiation, the latter when importing into tenancy agreements landlords' undertakings that the demised dwelling-houses were and would be kept fit for human habitation. Originally, it is true, the only test was whether the dwelling was suitable for occupation by members of the working class (Housing Act, 1885, s. 12) and this remained a test till the Housing Act, 1949, was passed; then in 1890 the Act of that year introduced a composition of rates limit, as provided for in the Poor Rate Assessment and Collection Act, 1869, s. 3, criterion; but the Housing of the Working Classes Act, 1909, ss. 14 and 15, differentiated

according to locality when it introduced three rent limits: £40 for London (county), £26 for boroughs and urban districts with populations exceeding 50,000 (last census), £16 "elsewhere." The Housing Act, 1925, s. 1, reduced the differences to one: London and elsewhere, and this has remained the case.

Rent control legislation has always insisted on a geographical test, the boundary of the Metropolitan Police District being the dividing line; and though some anomalies may result, e.g., in or about Watford, the facts I have mentioned would warrant such differentiation.

More differentiation

It can be pointed out not only that rent control legislation has been applicable to dwellings in one district when it would not apply to similar dwellings in another, and that cl. 9 (1) of the Rent Bill maintains a distinction of that nature, but that cl. 9 (3) actually provides for further differentiation in the future. "The Minister may by order provide that the Rent Acts shall not apply, as from such date as may be

specified in the order, to dwelling-houses the rateable value of which . . . exceeds such amounts as may be specified; and an order under this subsection may be made so as to relate to the whole of England and Wales . . . or to such areas as may be specified in the order . . ."

The Minister of Housing and Local Government has decided to postpone the day (good or evil, according to viewpoint) for everyone; which seems, having regard to the differences in housing shortage between different areas, rather a pity; on balance of considerations, at all events. In the above-mentioned "Current Topic" of 12th January, the plight of Birmingham tenants was given as an instance; the debates in the House of Commons Standing Committee A, which began on 6th December last, testify to hardship being expected in a number of other localities: Croydon, Edinburgh, Luton, Sheffield, and, of course, North Lewisham among them, as well as to opposition voiced by sundry local councils. This being so, we consider that there is much to be said for progressive decontrol by districts as well as by stages.

R. B.

HERE AND THERE

EXPLORING THE POLE

THERE is an old story of a farm labourer who took his little son to an assize court. There sat the splendid if slightly improbable figure of the judge in scarlet and ermine and great wig, impassive, perhaps a trifle mummified, listening to the case. Suddenly the figure turned its head. "Whoi," exclaimed the child, "it's aloive." Even we who know better and who can speculate just what proportion of any particular judge is a common juror beneath the ermine, experience a perceptible thrill of surprised satisfaction when we find a judge, in his capacity as a judge, actually doing something that other human beings do. Our inner vision of a judge as a sort of robed idol to be worshipped remains so strong that it is with a shock of incredulity that we suddenly look up and see his lordship at the top of a telegraph pole. It was perfectly sensible of Mr. Justice Donovan to climb the two twelve-foot telegraph poles (or rather tops of telegraph poles) set up in his court at Norwich during an accident case to illustrate the fall of a telephone-line engineer. *Experientia docet*. Judges in the past have been known to try the paces of mettlesome horses whose character was in dispute before them. Here in the age of the common man was a judge doing substantially the same thing in a contemporary idiom. One must congratulate the Press (particularly that section of it which is not taken by Top People) on having refrained from catching the pennies of the unwary with some such eye-taking poster as "Well-known Judge up the Pole." One must regret that the experiment was tried modestly *in camera*. At least one might have hoped that, having safely survived it himself, the judge might have suggested that counsel on either side should make the ascent, each up his chosen pole, and perhaps address arguments to his lordship from the summit. If what we hear of some American courts be true, the practical, empirical spirit which so often seems to animate their procedure and their decisions would almost certainly have imposed some such course. Indeed, in sheer delight at the opportunity, the whole trial might have become a sort of pole-squatting contest, with a pole for the judge and two poles for opposing counsel (poles apart, of course) and a witness pole for the witnesses, and an appeal to a higher

court where, obviously, everybody's poles would have been twice as high. In both courts documents, books and exhibits would be passed to and fro by ushers on a flying trapeze or, more likely, by beautiful bespangled usherettes. But I'm afraid it couldn't happen at Norwich. The circuit customs almost certainly have some provision forbidding it. Besides, in the particular times in which we live, there is a special danger in judges and counsel exhibiting proficiency in pole climbing. Already, doubtless, whispers are going around the world of the trade unions and the shop stewards. A person not belonging to the Pole Climbers' Union has climbed *two* poles and belted himself to the top. This is a direct assault on the closed shop principle. Before we know where we are there will be strikes all over the country and the whole telegraph system will be paralysed. Undoubtedly it's safer to stick to the Bench.

SHAW'S LAW

So Bernard Shaw's, trust for a new alphabet has failed, to borrow a phrase from his will, "by judicial decision." But Mr. Justice Harman was not accepting the responsibility for that. The fault, he said, was Shaw's, "who failed, almost for the first time in his life, either to grasp a legal problem or to make up his mind what he wanted." Bench and Bar were provided by the testator with more material for an enjoyable argument than they usually find in a will case. Towards the end, Mr. Charles Russell, Q.C., had observed that it would be interesting to see the transliteration into Shaw's new alphabet of the passage in "Androcles and the Lion": "Didums get an awful thorn in ums' tootsums-wootsums." The judge in his reserved judgment delivered a spirited appreciation of the writer who acted as a kind of "itching powder" to the English-speaking peoples and became an oracle, and commented on the strange destiny which had turned "Pygmalion" of 1914 into an American musical in 1957. Would Shaw be angry at the decision? Certainly not. With all his fire and ruthlessness and Irish determination to carry an idea to its logical conclusion, however extravagant, he had the supreme merit of never being an "Angry Young Man" or an "Angry Old Man"—a man with a grievance.

If his spirit in some Shavian Elysium has had news of the proceedings, he is probably writing an ironical play about them, perhaps with a part for the Q.C. whose father was a waiter. You remember "You Never Can Tell"? "I've often wished he was a potman, sir. Would have been off my hands so much sooner, sir . . . Yes, sir, had to support him until he was thirty-seven, sir. But doing very well, now, sir; very satisfactory, indeed, sir. Nothing less than fifty guineas, sir . . . We get on together very well, very well indeed, sir, considering the difference in our stations . . . But, as I say, where's the difference, after all? If I must put on a dress

coat to show what I am, sir, he must put on a wig and gown to show what he is. If my income is mostly tips, and there's a pretence that I don't get them, why, his income is mostly fees, sir, and I understand there's a pretence that he don't get them! If he likes society and his profession brings him into contact with all ranks, so does mine, too, sir. If it's a little against a barrister to have a waiter for his father, sir, it's a little against a waiter to have a barrister for his son: many people consider it a great liberty, sir." You see, once one starts quoting Shaw one can hardly stop. He doesn't need a new alphabet to keep his memory alive.

RICHARD ROE.

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal".]

Jungle Justice

Sir,—Several recent cases before examining justices have once again thrown into sharp relief some of the glaring defects in English criminal procedure for indictable offences. These can be summarised as follows:—

(1) A tremendous waste of time and public money is involved in taking down the depositions of the witnesses in longhand in open court. After committal to the assizes, the same evidence has to be adduced a second time at the trial itself and usually by the same counsel.

(2) The proceedings before the magistrates take place in public in open court and are reported in the national Press. Thus, all the evidence is disclosed to the public prematurely by condensed and often garbled reports. Witnesses at once become the subject of sensational publicity of an undesirable kind.

(3) Where the magistrates elect to conduct any part of these proceedings *in camera* and so exclude the Press, the likelihood of distortion occurring in the newspaper columns is greatly increased. Potential jurors, instead of commencing their duties with impartial minds, will almost certainly have discussed the more sensational aspects of the case with members of their family and friends. Hearings of many recent murder trials have had to be removed from the circuit towns to the Central Criminal Court (Old Bailey) because of the intensity of local feeling. This in itself affords ample proof of the system's shortcomings.

(4) The verdict of the "twelve good men and true" must be unanimous. If the jury cannot agree after three hours, the case is sent for retrial. Apart from the delay, enormous expense is entailed. The counsel involved get three bites of the succulent cherry: at the magistrates' court, the assizes, the retrial—and with the possibility of an appeal. Further, there is no third verdict where the evidence is thin and inconclusive, and majority decisions are not permissible.

(5) If at the trial the defence counsel calls witnesses on behalf of the accused he loses the right to have the last word before the judge's summing up.

Wherein lies the remedy?

In Scotland all these defects are absent. The Lord Advocate and Solicitor-General for Scotland with five Advocates-Depute occupy positions similar to the English law officers and perform the functions of the Department of Public Prosecutions. In addition, a full-time Public Prosecutor known as a "Procurator Fiscal" is appointed for every county and borough with the duty of investigating all crimes.

Where a murder has been committed, the Procurator Fiscal, on receiving evidence of the crime from the police, takes depositions from the Crown's witnesses in private in his chambers. These depositions, which form the brief of the case, are then

forwarded to the Lord Advocate in Edinburgh. He, or one of his deputies, decides whether there is a case for trial.

By this time the accused person has been formally charged and has been remanded in custody or released on bail.

In Scotland, if there is a *prima facie* case when the accused is led into the dock at the trial, the Press, public and jury hear the evidence for the first time, apart from the bald statement of the indictment.

The jury can return one of three verdicts—guilty, not guilty or not proven—either unanimously or by a simple majority. Thus there is no need for a retrial.

Whether defence counsel calls witnesses on behalf of the accused or not, he has always the right to address the jury last, before the judge's summing up.

In no sense does Scottish procedure constitute trial *in camera*, which is so alien to the traditions of British justice.

The need for reform is overdue and clamant. The responsibility for introducing the legislation lies with the Government. Let no time be lost in erasing these blots from the English criminal code.

LESLIE W. D. AITCHESON, M.A., LL.B.

London, S.W.1.

Modern Handwriting

Sir,—I am conducting a nation-wide survey of handwriting, which, coupled with many years' research into the problems both technical and aesthetic that confront the introduction of a more practical, everyday cursive, will, I hope, result in an acceptable plan for modern handwriting. The results of this survey will take the form of a detailed analysis from which the plan will be evolved.

For this purpose I am most anxious to obtain as many examples of every type of handwriting as I can, and if I may presume upon the hospitality of your columns, I would appeal to all your readers to send me a small example of their normal handwriting. It will not be necessary to include name and address unless senders require an acknowledgment (in such a way anonymity will be assured), but it is essential that each example includes the following particulars:—

- (1) age/sex/profession;
- (2) type of pen used (fine/med/broad/oblique/ball point);
- (3) left-hand or right-hand.

May I in advance thank all readers of THE SOLICITORS' JOURNAL for their co-operation and assure them that every example received will be of the utmost importance in this survey of a subject which is attracting attention in many parts of the world with all professions.

REGINALD PIGGOTT.

10 Finlay Drive,
Dennistoun,
Glasgow, E.1.

The Queen was pleased on 13th February to confer the honour of Knighthood upon Mr. Justice (GILBERT JAMES) PAULL.

Mr. R. G. Parr, managing clerk to Messrs. Drake, Sturton & Co., of Eastcheap, London, E.C.3, celebrated sixty years with the firm on 8th February.

SOLICITORS' REMUNERATION ORDER, 1956

The following is the text of the two letters referred to in our Current Topic entitled "Solicitors' Remuneration Order, 1956" (p. 196, *ante*).

Law Society's Hall,
Chancery Lane,
London, W.C.2,

7th December, 1956.

Dear Mr. Jenkins,

Solicitors' Remuneration Order, 1956

I was present when you moved in the House of Commons the Prayer to disallow the Solicitors' Remuneration Order and, if I may say so, I was impressed by your evident desire to deal fairly with the matter and to say nothing that would make unnecessary difficulty between The Law Society and the local authorities.

It was all the more painful, therefore, to hear you make a charge of bad faith against The Law Society, a charge which under the conditions there was no opportunity of dealing with. The alleged breach of faith is based on the statement (reported in col. 189 in *Hansard* for the 26th November) that "four local authority organisations and the London County Council were negotiating with The Law Society up to April, 1954, as to whether or not an Order of this kind should be made."

I am sorry to have to tell you that this statement is quite untrue.

The position is as follows. Under the existing law in conveyancing matters, a solicitor is entitled to charge his client at his own election by one of two means. The first is on a scale (Sched. I) based upon the value of the property; the second is by charging "such sum as may be fair and reasonable having regard to all the circumstances of the case" (Sched. II). When land is being compulsorily acquired, the purchaser has to pay the vendor's legal costs. If the land is registered land the vendor's solicitor is entitled to deliver to his client a bill based upon the law as stated above, and the acquiring authority pays accordingly. If the land is unregistered land, the vendor's solicitor is not entitled to deliver a bill based on scale (Sched. I) but only on Sched. II. This provision dates back to 1883 and was originally made for the protection of solicitors. I need not go into the reasons, but the distinction is a purely historical one and is now a complete anachronism.

For some years The Law Society has been seeking an order from the Statutory Committee putting unregistered land on the same footing as registered land where a compulsory purchase is concerned. The matter has been brought before the Statutory Committee twice during the last few years, the most recent occasion being in 1956, when the Statutory Committee decided to make the Order against which a Prayer on your motion was made.

Whether The Law Society should make this application to the Statutory Committee or not has never been the subject of negotiation with the local authorities although the local authorities are well aware of the continued and repeated efforts of The Law Society to remove the anachronism. What has been the subject of negotiation is how, under the existing Order, that is to say irrespectively of The Law Society's efforts to have it changed, Sched. II should be applied as between the vendor and the acquiring authority. It was these negotiations which took place in 1953 and the early part of 1954, following on changes in Sched. II which had nothing whatever to do with The Law Society's applications to the Statutory Committee to which I have referred above.

I do not wish to pursue the merits of the question. You made it plain that you were not doing so in the House. I felt, however, that I owed it to you to bring to your notice that you were led to make a charge of bad faith in the House of Commons upon erroneous information supplied to you with regard to the course of events; though I readily accept that there was no deliberate attempt to mislead you, and that the charge was made by the local authority associations as the result of a misunderstanding.

I am taking the liberty of sending a copy of this letter to your seconder, Mr. Pargiter, and I am naturally sending a copy also

to the Lord Chancellor who is a member of the Statutory Committee and who, under the constitution of that Committee, has in effect a veto on its decisions.

Yours sincerely,
(Sgd.) E. S. HERBERT,
President.

Robert Jenkins, Esq., M.P.,
House of Commons,
S.W.1.

From Robert Jenkins, J.P., M.P.

House of Commons,
Westminster, S.W.1,

14th December, 1956.

Dear Sir Edwin,

Thank you for your letter of the 7th December. I much appreciate its tone and spirit. Naturally you will realise that the action I took in opposing the Solicitors' Remuneration Order was in no way actuated by any desire to be unfair to The Law Society.

May I assure you that I did not receive any erroneous information in regard to the course of events which led up to the Prayer which I moved. The phrase which you have picked out from my opening remarks may have misled you and I agree that it was incorrectly expressed. This was brought about by my desire to condense my remarks owing to the limited time available to me. I was aware that the discussions which had taken place were not about the Order but concerned the costs payable by local authorities—they would, of course, be vitally affected by such an Order.

I hope that you will have noticed that my reference to a breach of faith appears much later in my speech (almost at the bottom of col. 190 of *Hansard*) and the reasons which led up to this observation are clearly indicated in the two preceding paragraphs. My seconder, Mr. Pargiter, also made the position quite clear.

According to the information which I have received, and the correspondence which has been shown to me, the Solicitors' Remuneration Order, 1956, would have altered the present basis on which local authorities pay to a vendor his solicitor's costs by enabling solicitors to charge in "unregistered title" cases either on the scale or under Sched. II. As I understand the position, solicitors must at present charge under Sched. II.

In their letter of the 25th February, 1953, The Law Society invited the local authorities associations to make an arrangement as to the method of charging to a local authority the vendor's solicitor's costs. This invitation was accepted and a meeting with The Law Society took place on the 8th October, 1953, when the possibility of a special scale of charges was discussed.

On the 1st February, 1954, according to the information which I have been given, The Law Society put forward concrete proposals for such a scale but the associations thought these proposals too high and a further meeting took place on the 18th March. I have been shown a copy of the note of this meeting taken by The Law Society and supplied to the associations and I feel that the following extract is relevant:—

"Representatives of the A.M.C. opened with the suggestion that any scale which might be agreed should be embodied in a Solicitors' Remuneration Order, which should do away with the right of the vendor's solicitor to elect to their client to charge under Sched. II.

In reply, the Chairman said that such a course had not been envisaged by The Law Society. Any agreed scale would in practice be accepted by the profession and also presumably by local authorities, and accordingly it seemed unnecessary to go to the length of a Remuneration Order.

The representatives of the A.M.C. explained that their wish was to have any new arrangement put on a definite basis either by a Solicitors' Remuneration Order or alternatively by statute.

The Chairman pointed out that the steps necessary in connection with either course would entail considerable delay of which The Law Society had recently had particular experience.

Mr. Horsfall Turner expressed the view that a Remuneration Order might not in any event be an appropriate method of

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Solicitors—MARKBY, STEWART & WADESONS

procedure because the question under discussion was the extent of a local authority's indemnity to the vendor and not of the actual charges to be made by the vendor's solicitor against his client. Legislation to amend s. 82 of the Lands Clauses Consolidation Act, 1845, might be required if the matter was to be put on an enforceable basis, though he was not saying that he thought it should be on such a basis.

The local government representatives suggested that, if it were possible to agree a scale, it should be put into operation immediately on the basis that steps were then taken to obtain statutory authority for it. There were difficult people both amongst local authorities and solicitors, who might not agree to follow the scale unless they were forced to do so.

The Chairman promised that The Law Society would give the matter consideration, though he would not at this stage say that it would be agreed."

I understand that this meeting was adjourned until the 8th April, when following further discussion, the following statement was made, and again I am quoting from The Law Society's note of the meeting:—

"The Town Clerk of Birmingham said that local authorities favoured taxations in order to reach some finality in the matter. The chairman replied that the difficulty was to find representative taxations. Mr. Sargent remarked that it appeared that about 50 per cent. of all local authorities paid amounts equal to the statutory scale fee and 50 per cent. under Sched. II before the introduction of the new Sched. II.

The Town Clerk of Bristol expressed the view that The Law Society's proposals represented more than a reasonable increase, although it was quite appreciated that there must be some increase. The chairman said that The Law Society's approach to the matter is on the basis that local authorities should pay vendors' solicitors' costs under the new Sched. II on a scale equal to the statutory scale . . . Mr. Horsfall Turner said it would be desirable if possible to agree upon a number of average cases containing no exceptional circumstances for taxation."

At the meeting on the 8th April, proposals were made by the local authority associations, which The Law Society's representatives referred to their council. On the 13th April, 1954, The Law Society sent the letter to the local authority associations, of the contents of which I am sure you are aware. I must, however, quote the following extracts, which I feel are most material:—

" . . . As they understand that the view of the Local Government bodies is that the proposals have to be considered

as a whole (and that there is no possibility, for example, of agreeing a scale up to £1,000 or up to £7,500 leaving the rest undetermined) this virtually means that it would be a waste of time at present to hold any further meeting.

The council hope that it may eventually be possible to agree a scale of charges, perhaps after the position has been clarified by a series of taxations . . . It is the council's intention to notify you in advance wherever possible of any taxations which have the backing of The Law Society and it is hoped you will be prepared to reciprocate . . ."

Since the date of that letter, I am informed that the local authority associations have been collecting evidence of taxations with a view to continuing the discussions with The Law Society, and having regard to the terms of that letter they assumed that The Law Society were acting in a similar way; they certainly have had no communication to the contrary from The Law Society.

When the local authority associations became aware that the Solicitors' Remuneration Order, 1956, had been made, they communicated with the Lord Chancellor's Office. They informed that office of the discussions which had been taking place in 1954 and specially asked whether the Rules Committee was informed of the discussions with the local authority associations. The Lord Chancellor's Office replied, and I will only quote one sentence of the letter:—

" . . . The Committee was aware of the fact that The Law Society had been in negotiation with the local authority associations but was informed that these negotiations had proved abortive . . ."

All I can add is that if The Law Society gave this information to the Rules Committee, they do not appear, from any of the correspondence which I have seen, ever to have made that view known to the local authority associations.

My hope is that as a result of what has taken place, your society and the local authority associations can again meet round the table and reach an amicable settlement.

As you sent a copy of your letter to me to Mr. Pargiter and to the Lord Chancellor, I feel that it is only right that I should send to each of them a copy of my reply.

Yours sincerely,

(Sgd.) ROBERT JENKINS.

Sir Edwin Herbert, K.B.E., LL.B.,
President,
The Law Society,
Law Society's Hall,
Chancery Lane, W.C.2.

PRACTICE DIRECTIONS

PRINCIPAL PROBATE REGISTRY

ATTORNEY—FURTHER GRANT TO ATTORNEY ADMINISTRATOR

19th February, 1957.

Where an attorney administrator seeks a concurrent grant in another estate in his capacity of personal representative this further grant will not be issued without inspection of the power of attorney. A power in general terms appointing the attorney for all purposes will be accepted as establishing his right to apply for the further grant; but if the power is a limited one confined to obtaining the first grant, a further power extending the attorney's duties to obtaining the further grant will be required.

B. LONG,
Senior Registrar.

FOREIGN LAW—AFFIDAVIT OF LAW

19th February, 1957.

On application for an order for a grant under r. 29 of the Non-Contentious Probate Rules, 1954, any affidavit of law should refer to the facts and state the law applicable, but this must be supported by adequate evidence (normally an affidavit,

or statement in the oath, by the applicant) as to the facts themselves.

B. LONG,
Senior Registrar.

FIXED COSTS IN THE QUEEN'S BENCH DIVISION

With the introduction of Charging Orders on land under the new Order 46, r. 2, the fixed costs for Charging Orders has been revised. The amount has been increased from £3 11s. 6d. to £5 10s. (with an additional 15s. where an affidavit of service is required). These figures will apply to all Charging Orders, whether on stock or on land, but will not apply where it is necessary to issue an originating summons in the Chancery Division under Order 46, r. 2 (3).

The item on p. 4 of the Table of Fixed Costs issued on 1st September, 1956 [see 100 SOL. J. 669, 670], should be amended accordingly.

F. ARNOLD BAKER,
Senior Master.
18th February, 1957.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Chancery Division

COSTS: CONTEMPT OF COURT: INDEMNITY BASIS WHEN SUCCESSFUL APPLICANT AWARDED SOLICITOR AND CLIENT COSTS

Morgan v. Carmarthen Corporation and Others

Danckwerts, J. 15th January, 1957

Summons to review taxation.

The plaintiff brought an action against the corporation, which retained leading and junior counsel. Subsequently, the corporation, retaining the same leading and junior counsel, moved to commit to prison or, alternatively, to obtain leave to issue writs of attachment against, the plaintiff and the editor and a reporter of a newspaper for contempt of court in writing, publishing and procuring to be published a certain article. The plaintiff, editor and reporter ultimately apologised to the court for their contempt, but at first contended by their own leading counsel that they had not been guilty of it. The court found them guilty of contempt, and ordered them to pay the corporation's costs of the motion as between solicitor and client. The taxing master reduced the corporation's leading counsel's fee from 300 to 100 guineas and junior counsel's fee from 200 to 67 guineas. The corporation took out a summons to review the taxation and to allow the fees at the full amounts.

DANCKWERTS, J., said that the master, in framing his answers, had in mind *Giles v. Randall* [1915] 1 K.B. 290, where Buckley, L.J., had said that there were three modes of taxation as between solicitor and client. The proper comment on that was that, if that were so, the law had got into a deplorable state; in the third class so stated, the successful litigant got nothing more than a minor addition to party and party costs. It appeared from authority that these three categories were not exhaustive: see *Goodwin v. Storrar* [1947] K.B. 457 and *Reed v. Gray* [1952] Ch. 377. The present case was in the nature of a criminal information. In the Chancery Division in such cases costs were not awarded unless the court was of opinion that the respondent was guilty of contempt and deserving of punishment. In such circumstances an award of costs as between solicitor and client was punitive, and was outside the third class in *Giles v. Randall*, *supra*. The successful applicant should receive costs substantially on an indemnity basis. The full fees of leading and junior counsel should be allowed. Order accordingly.

APPEARANCES: N. S. S. Warren (*Boxall & Boxall*); H. Milmo (*Rhys Roberts & Co.*), for W. Davies & Jenkins, Llanelly; Suepstone, Walsh & Son).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law]

[2 W.L.R. 396]

ECCLESIASTICAL LAW: PECULIAR: RIGHT OF RECTOR TO GRANT MARRIAGE LICENCES

Powell v. Representative Body of the Church in Wales

Wynn Parry, J. 22nd January, 1957

Adjourned summons.

The ancient parish of Hawarden situate in the County of Flint comprised the present parish of Hawarden and the neighbouring parishes of Buckley and Shotton, which were carved out of the ancient parish at or about the end of the nineteenth or the beginning of the twentieth century. The ancient parish has for many centuries been included in the principality of Wales; but it lies to the east of Offa's Dyke and was at one time part of the Kingdom of Mercia and was originally included in the Mercian diocese of Lichfield. On the creation, however, in 1541 of the diocese of Chester the ancient parish was included in the Chester diocese, and continued therein until 1849, when, under an Order in Council of that year made under the Ecclesiastical Commissioners Act, 1847, it was transferred to the diocese of St. Asaph. For many years before 1846 the rectors of the ancient parish had enjoyed and exercised certain peculiar privileges, which included the granting of marriage licences, the probate of wills, and the holding of their own courts and having their own proctors. In respect of the privilege of granting marriage licences within

the area of the ancient parish, the rectors of Hawarden, concurrently with the bishops of St. Asaph, had continued to exercise such privilege from the passing of the Ecclesiastical Jurisdiction Act, 1847, until the disestablishment of the Church in Wales on 31st March, 1920. Doubts having arisen whether the privilege to grant marriage licences had not been extinguished by the disestablishment of the Church in Wales, the plaintiff, the present rector of Hawarden, issued the present summons for determination of the question whether the passing of the Welsh Church Act, 1914, and the Welsh Church (Temporalities) Act, 1919, had extinguished the right of the rector of Hawarden to grant marriage licences within the area of the ancient parish.

WYNN PARRY, J., said that there was no doubt that the draftsman of the Welsh Church Act, 1914, set out to abolish the right of both the bishop and the rector to grant marriage licences; and there could be no doubt that the Act carried out this intention. The question was, by which section of the Act was this achieved? The plaintiff contended that the abolition was achieved by s. 23, while the defendants contended that it was done by s. 3. It was, therefore, necessary to consider these two sections. In his (his lordship's) judgment, it was s. 23 and not s. 3 of the Act of 1914 which abolished the right of an ecclesiastical person to grant marriage licences. His lordship then referred to s. 6 of the Welsh Church (Temporalities) Act, 1919, and said that, in view of the provision in that section repealing s. 23 of the Act of 1914, he concluded that the phrase "the law with respect to marriages" in s. 6 had the same content as the phrase "the law relating to marriages" in s. 23 of the Act of 1914. Putting aside for the moment para. (b) of s. 6 of the Act of 1919, he would conclude that the effect of the repeal of s. 23 of the Act of 1914 was to restore or preserve the right of the plaintiff and in this connection it was, in his view, immaterial that the rectorship of the ancient parish of Hawarden was no longer a corporation sole. It remained, therefore, to consider the effect of para. (b) of s. 6. Express provision was made that the right of the bishops of the Church in Wales to grant marriage licences was not to be affected by either of the Acts; but nothing was said about the rights of other persons, which previously existed, to grant marriage licences. The section was essentially a preserving section and not one whose object was to effect any abolition. In those circumstances he could see no room for the application of the doctrine *expressum unius est exclusio alterius*, or the doctrine *expressum facit cessare tacitum*. In his view, therefore, the right claimed by the plaintiff survived, and he enjoyed that right concurrently with the Bishop of St. Asaph. Declarations accordingly.

APPEARANCES: R. O. Wilberforce, Q.C., and K. Elphinstone (*Freshfields*); R. Gwyn Rees and S. W. S. Wigglesworth (*Trower, Still & Keeling*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law]

[1 W.L.R. 439]

Queen's Bench Division

RATING: REFUND: EFFECT OF DISCOUNT

West Hartlepool Corporation v. Northern Gas Board

Lord Goddard, C.J., Cassels and Lynskey, JJ.

24th January, 1957

Case stated by West Hartlepool justices.

A refund was due to a gas board under the transitional provisions of Sched. IV (2) to the Rating and Valuation (Miscellaneous Provisions) Act, 1955, in respect of rates overpaid during the four rating periods from 1st April, 1952, to 31st March, 1956. During those four rating periods each of the demand notes served on the board had shown the amount of the 2½ per cent. discount allowable under s. 8 of the Rating and Valuation Act, 1925, on prompt payment of rates, and the board had taken advantage of the discount allowance and had paid the gross amount demanded less 2½ per cent. The rating authority considered that the words "rates actually levied" in para. 2 (1) of Sched. IV to the Act of 1955 meant, up to the last date for allowance of the discount, the amount of the rates less the discount, and, on 6th April, 1956, making their calculations on the footing that the amount

due to be refunded to the board was the difference between the amount of rates demanded during the four periods less 2½ per cent. discount and the amount of rates due according to the new assessment less 2½ per cent. discount, paid £8,989 9s. 2d. to the board in purported discharge of the refund. The board calculated the amount of refund due to them as being the difference between the gross amount of rates demanded during the four periods and the gross amount of rates due according to the new assessment and, claiming that the sum of £204 5s. 4d. was outstanding under the composite settlement required by Sched. IV to the Act of 1955, withheld that amount from the payment of the current general rate. The rating authority preferred a complaint against the board asking for the enforcement of the £204 5s. 4d. The justices dismissed the complaint and the rating authority appealed.

LORD GODDARD, C.J., said that, in his opinion, the actual amount levied was the demand which was made on the ratepayer. Notice was given to a ratepayer that the rating authority had made a rate at so much in the £ and, his valuation being so much, the amount due from him was £x. That was the amount levied, and the matter became clearer by reference to the Rating and Valuation Act, 1925, which used the expressions "making the rate," "levying the rate," "collecting the rate" and "recovering the rate." Levying and collecting were quite different things and had Parliament intended that the discounts provided for by s. 8 of the Act of 1925 should be taken into account, instead of using the words "the rates actually levied" they would have said "the rates actually collected." It was said that the justices had no power to inquire into what was the amount leviable, but the rating authority had gone to them for the purpose of enforcing arrears of rates and the justices were not only entitled but bound to consider whether anything was due.

CASSELS and LYNKEY, J.J., agreed. Appeal dismissed.

APPEARANCES: R. E. Megarry, Q.C., and W. B. Harris (Lewin, Gregory, Mead & Sons, for Town Clerk, West Hartlepool); Percy Lamb, Q.C., and W. R. Steer (Kerly, Sons & Karuth, for J. F. Jackson, Newcastle-on-Tyne).

[Reported by Miss J. F. LAMB, Barrister-at-Law]

[1 W.L.R. 445]

ROAD TRAFFIC: DRIVING UNDER THE INFLUENCE OF DRUGS: INSULIN

Armstrong v. Clark

Lord Goddard, C.J., Cassels and Lynskey, J.J.

30th January, 1957

Case stated by Cheshire justices.

The defendant, who had suffered for some twelve years from diabetes, after taking by injection his usual and prescribed quantity of insulin and having eaten a regulated meal, drove his motor car a distance of some two miles to a cinema. About 2½ hours later, the defendant started to leave the cinema and remembered no more. He in fact got into his motor car and drove it a distance of some four miles before it left the road. He was found on the same night sitting rigidly at the wheel of the car in a semi-comatose condition and, on being examined at a nearby hospital, was found to be in a hypoglycaemic coma due to the overaction of the insulin injection he had previously taken. On a charge of being under the influence of a drug to such an extent as to be incapable of having proper control of the vehicle contrary to s. 15 (1) of the Road Traffic Act, 1930, the justices acquitted the defendant, accepting a submission that the taking of insulin by him was not the taking of a drug but the replacement of an essential hormone which his body was unable to supply. The prosecutor appealed.

LORD GODDARD, C.J., said that it was plain for the purposes of the Act that insulin was a drug. A drug was a medicament or medicine, something given to cure, alleviate or assist an ailing body. It was impossible to say that the defendant was not under the influence of a drug, and the case must go back with a direction to that effect. The section was designed for the protection of the public, and if people were in a condition of health which rendered them subject to comas, or took remedies which might send them into a coma, then they might not drive as they were a danger to the public.

CASSELS and LYNKEY, J.J., agreed. Appeal allowed.

APPEARANCES: R. J. Parker and F. P. Neill (Gregory, Rowcliffe and Co., for Hugh Carswell, Chester); G. Howard, Q.C., and J. W. De Cunha (Charles Russell & Co., for Shelton & Co., Manchester).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law]

[2 W.L.R. 400]

ANIMALS: LIABILITY OF CIRCUS OWNERS FOR INJURIES CAUSED TO MIDGETS BY TRAINED CIRCUS ELEPHANT

Behrens and Another v. Bertram Mills Circus, Ltd.

Devlin, J. 30th January, 1957

Action.

The plaintiffs, husband and wife, were both midgets and during the Christmas season beginning in December, 1953, were on exhibition in a booth in the funfair adjoining the defendants' circus at Olympia, which they and their manager occupied under licence from the defendants. At the far end of the funfair the defendants kept six female Burmese elephants which performed in the circus. The plaintiffs' booth was in a passageway leading from the funfair to the circus ring along which the elephants, escorted by their trainer and grooms, passed several times a day on their way to and from the circus ring. On 2nd January, 1954, the plaintiffs' manager had in the pay box of their booth a small dog which had been introduced into the premises contrary to the defendants' rules. As the elephants were passing the booth, the dog ran out barking and snapping at one of them. The elephant named Bullu turned and went after the dog, followed by some of the other elephants, and the plaintiffs' booth was knocked down, the female plaintiff being seriously injured by falling parts of the booth. None of the elephants directly attacked either of the plaintiffs. The plaintiffs' custom was to work together touring fairgrounds and music halls where they appeared together, either on exhibition or on the stage, but their act was not a joint act and the part played by the female plaintiff was only subsidiary to that of her husband, who could have obtained work without her. The plaintiffs as was normal in the case of married midgets were utterly dependent upon each other and during the period of his wife's incapacity the male plaintiff, whose earning capacity was not affected by her injuries, did not take any work; and, although he could have taken work and gone away on tour without her, it was reasonable for him not to do so. The plaintiffs, alleging, *inter alia*, breach by the defendants of the absolute duty laid upon the keeper of a dangerous animal to confine or control it, claimed damages. The defendants raised, *inter alia*, the following pleas: (1) that the elephants in question were not animals *feræ naturæ* within the meaning of the rule relating to strict liability; (2) that liability was only imposed in respect of injury resulting from the acts of an animal due to its vicious and savage nature; (3) that the maxim *volenti non fit injuria* applied to the plaintiffs; and (4) that the act of the elephant was caused by the wrongful act of the plaintiffs' manager in introducing the dog into the funfair.

DEVLIN, J., reading his judgment, said that a person who kept an animal with *scienter*, knowledge of its tendency to do harm, was strictly liable for damage it did if it escaped, and was under an absolute duty to confine or control it so that it should not do injury to others. All wild animals *feræ naturæ* were conclusively presumed to have such a tendency so that the *scienter* need not in their case be proved. Four years ago a committee appointed by the Lord Chancellor and presided over by the Lord Chief Justice recommended that the *scienter* action should be abolished, and that liability for harm done by an animal should be the same as in the case of any other chattel and depend on the failure to exercise the appropriate degree of care. His lordship hoped that Parliament might find time to consider that recommendation, for that branch of the law was badly in need of simplification. The law ignored the world of difference between the wild elephant in the jungle and the trained elephant in the circus. The elephant Bullu was in fact no more dangerous than a cow; but he (his lordship) was compelled to assess the defendants' liability in just the same way as if they had loosed a wild elephant into the funfair. It had been submitted that Bullu was not acting viciously but out of fright and was seeking to drive off the small dog rather than to attack it. The logic of the matter did not necessarily require that an animal savage by disposition should be put on exactly the same footing as one that was savage by nature, and if a person woke up in the middle of the night and found an escaping tiger on top of his bed and suffered a heart attack it would be nothing to the point that the intentions of the tiger were quite amiable. Bullu was to be treated as if she were wild, and if a wild elephant were let loose in a funfair and stampeding around there would not be much difficulty in holding that a person injured by falling timber had a right of redress. It was not

practicable to introduce conceptions of *mens rea* and malevolence in the case of animals. As to the plea of *volenti non fit injuria*, his lordship took the law as that laid down in *Clayards v. Dethick and Davis* (1848), 12 Q.B. 439; the passing of the elephants did not create an obvious danger and the plaintiffs' decision made after they had discovered that the elephants passed their booth, to continue to exercise the right which they had paid for to use the booth, was not foolhardy or reckless. That plea failed. Dealing with the defence that the act of the elephant was due to the wrongful act of a third party, his lordship said that, if that defence applied, the status of the plaintiffs' manager as a licensee was irrelevant, since liability depended not upon occupation of land but upon possession of the animal. The point was, however, concluded against the defendants by the decision of the Court of Appeal in *Baker v. Snell* [1908] 2 K.B. 825, where one of the grounds upon which Lord Cozens-Hardy, M.R., and Farwell, L.J., had based their decision was that the wrongful act of a third party afforded no defence to a *scienter* action. On the question of damages, his lordship, distinguishing *Burgess v. Florence Nightingale Hospital* [1955] 1 Q.B. 349, said that Mr. Behrens's loss lay in the fact that his wife would, if he had gone on tour, have been unable to give him the society and domestic help which only she as a wife could give. In fact he had not gone on tour; he had preferred to stay at home during his wife's incapacity and accept the loss of earnings, and in the peculiar circumstances of the case his choice was a reasonable one. To hold that he might recover his loss of earnings during that period as damages might be breaking new ground in this type of action but there was no reason in principle why he should not be thus compensated. On the facts, it was a most exceptional case turning on the exceptional need which this husband had for the support of his wife as a wife. There would be judgment for Mr. Behrens for sums totalling £480 and for Mrs. Behrens for £2,930. Judgment for the plaintiffs.

APPEARANCES: *Harold Brown, Q.C.*, and *F. B. Purchas (Chalton Hubbard & Co., for Marsh & Ferriman, Worthing); M. Dunbar Van Oss and John Griffiths (William Charles Crocker).*

[Reported by Miss J. F. LAMB, Barrister-at-Law] [2 W.L.R. 404]

LIMITATION: ALTERATIONS OF BOUNDARIES OF LOCAL AUTHORITIES: MONEY CLAIMS MORE THAN SIX YEARS LATER

West Riding County Council v. Huddersfield Corporation

Lord Goddard, C.J. 6th February, 1957

Special case stated by an arbitrator.

The Local Government Act, 1933, provides by s. 151 that public bodies affected by alteration of areas may make agreements "for the purpose of adjusting any property, income, debts, liabilities and expenses (so far as affected by the alteration) of, and any financial relations between, the parties to the agreement." In default of agreement as to any matter requiring adjustment, the adjustment is to be referred to a single arbitrator. Orders were made by the Minister of Health in 1937 and 1938 by which parts of the area of the West Riding County Council were transferred and incorporated into the Borough of Huddersfield. In January, 1953, the county council sent to the corporation for agreement claims for £214,516 and £44,273, being the proposed adjustment called for by s. 151. The corporation did not agree to the claims, and an arbitrator was appointed. In their points of defence the corporation pleaded, *inter alia*, that the claims were statute barred as they did not arise within a period of six years before either the arbitration or the making of the claims. The arbitrator stated a special case.

LORD GODDARD, C.J., said that this was a money claim and an arbitration to recover a sum recoverable by virtue of an enactment within the meaning of s. 2 (1) (d) of the Limitation Act, 1939. If a local authority, on losing part of its area, could show that it had suffered financial loss which ought to be adjusted, then it had a claim for the money. It was submitted for the county council that the cause of the arbitration did not arise until the parties had failed to agree. But there was no obligation on the parties to come to an agreement. A demand for money was made more than six years after the transfer and therefore more than six years after the demand might have been made. In reality it was a proceeding to recover a sum of money by virtue

of the provisions of s. 151. There must be a declaration that the claim was statute barred. Declaration accordingly.

APPEARANCES: *Sir Hartley Shawcross, Q.C.*, and *I. S. Warren (Cummings, Marchant & Ashton, for Bernard Kenyon, Clerk to the County Council, Wakefield); H. Willis, Q.C.*, and *E. Blain (Sharpe, Pritchard & Co., for Harry Bann, Town Clerk, Huddersfield).*

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 428]

RAILWAY: BRIDGE: "IMMEDIATE APPROACHES": LIABILITY TO MAINTAIN

Monmouthshire County Council v. British Transport Commission

Lord Goddard, C.J. 13th February, 1957

Action.

In 1860 a railway company, pursuant to a private Act incorporating the provisions of the Railways Clauses Consolidation Act, 1845, constructed an extension to an existing railway so that it crossed a turnpike road. The company built a bridge to carry the road over the railway and the original line of the road was diverted at two points either side of the bridge so as to lead up to the bridge. The diversion on the north side of the railway necessitated a new stretch of road being constructed which, from the point where it left the old road to the bridge, measured some 367 yards, and ran along the top of the railway embankment. During recent years the embankment had started to slip and the road was in danger of giving way. The plaintiffs, as the highway authority, claimed against the defendants a declaration that the defendants were liable to maintain the new stretch of road as constituting part of the "immediate approaches" to the bridge within s. 46 of the Act of 1845.

LORD GODDARD, C.J., said that s. 46 did not deal with roads at all, but with bridges, and he was not prepared to hold that the words "immediate approaches" meant anything except that part that was adjacent to the bridge. Section 50 also dealt with "a good and sufficient fence on each side" of the immediate approaches; that referred to a bridge which could come up one side and go down the other. He did not think that the part of the road and embankment in question in this case came within s. 46 or that in doing work that was required to prevent the road falling into the cutting it was necessary work connected with the bridge, or with the approaches to the bridge. It was a cutting which had an embankment which was there for the protection of the cutting. It was not there for the protection of the bridge. Judgment for the defendants.

APPEARANCES: *Harold Williams, Q.C.*, and *Harold Marnham (Overton & Blackburn, for Vernon Lawrence, Newport); Geoffrey Cross, Q.C.*, and *H. E. Francis (M. H. B. Gilmour).*

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [1 W.L.R. 456]

Probate, Divorce and Admiralty Division

SHIPPING: COLLISION: TUG AND TOW: NEGLIGENCE OF CREW OF TUG: LIABILITY

Trishna (Owners, Master and Crew) v. M.S.C. Panther and Ericbank (Owners)

The M.S.C. Panther and the Ericbank

Willmer, J. 4th February, 1957

Action.

The steam barge *Trishna*, while inward bound up the Manchester Ship Canal, started to pass the outward bound *Ericbank* in an improper place in the canal. The *Ericbank* improperly failed to signal to her stern tug that the *Trishna* was being passed, and, when the *Trishna* had proceeded half-way down the length of the *Ericbank*, the *M.S.C. Panther*, which was acting as the stern tug of the *Ericbank*, without orders from that vessel swung out on her port quarter and blocked the passage of the *Trishna*. The *Trishna* was unable to take off her way completely and collided with the *M.S.C. Panther*, both vessels sustaining a small amount of damage. The port propeller of the *M.S.C. Panther* was improperly kept revolving, and, by striking the *Trishna* several times and holing her, caused her subsequently to sink. By the terms of the towage contract

between the *Ericbank* and the *M.S.C. Panther*, the crew of the tug became the servants of the tow.

WILLMER, J. (who sat with two nautical assessors), in a reserved judgment, said that the fact of the *Panther's* propeller continuing to revolve under power caused the grievous damage to the *Trishna*, and converted what would otherwise have been a trivial bump into a disaster. In his judgment, the largest single factor contributing to the damage was this fault of the *Panther*. The contention that the crew of the tug became in law the servants of the owners of the *Ericbank*, so as to make the latter liable for the negligence of the mate of the *Panther*, would not bear examination. He was prepared to assume that, as between themselves, these parties agreed that the crew of the tug should be deemed to be the servants of the owners of the tow. But, as against a third party who was injured by the act of a servant, the question which of two possible masters was liable (the regular employer or the temporary employer to whom the servant is loaned) did not depend on the terms of the contract made between the respective employers; it depended on which employer had the right to control the servant, not only as to what he was to do, but as to the way he was to do it. Moreover, it had been held that where the servant of one employer was temporarily loaned to another, it required cogent evidence to prove that the latter had acquired such a degree of control over the servant as to render him, rather than the regular employer, liable in the event of negligence on the part of the servant (see *Mersey Docks and Harbour Board v. Coggins & Griffiths (Liverpool), Ltd.* [1947] A.C. 1). Applying the principles there stated, he found that those in charge of the navigation of the tow had not acquired a sufficient degree of control over the crew of the tug for the manœuvre of stopping the port engine of the tug to be within the province of those in charge of the tow to order, and that, accordingly, as regards this faulty manœuvre, the crew of the tug remained the servants of their regular employers and were not to be regarded in law as the servants of the tow. He apprehended that the position would be different if the faulty manœuvre were one within the province of the pilot or officer in charge of the tow. The faults of the tug and tow were distinct and separate, and accordingly s. 1 of the Maritime Conventions Act, 1911, applied, and it was the duty of the court to apportion the blame between all three vessels. The case of *The Socrates and The Champion* [1923] P. 76 was distinguishable. Since it was not possible to establish different degrees of fault between the *Trishna* and the *Ericbank*, he had come to the conclusion that s. 1 (a) of the Maritime Conventions Act, 1911, applied and as between those vessels liability must be apportioned equally; and that the *Trishna* and *Ericbank* were to blame in the proportion of one-quarter each and the *M.S.C. Panther* as to one-half. Judgment for the plaintiffs for one-half of their claim against the first-named defendants and for one-quarter of their claim against the second-named defendants. Judgment for the first-named defendants for one-quarter of their counter-claim against the plaintiffs.

APPEARANCES: J. V. Naisby, Q.C., and Derek H. Hene (Batesons & Co.); K. S. Carpmæl, Q.C., J. B. Hewson (Weightman, Pedder & Co.).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [2 W.L.R. 432]

HUSBAND AND WIFE: PRACTICE: DECREE ABSOLUTE: CO-HABITATION RESUMED AFTER DECREE NISI

Rose v. Rose

Willmer, J. 5th February, 1957

Summons for leave to apply for decree absolute.

The applicant wife was granted a decree nisi on 6th June, 1945, on the ground of the husband's adultery. The parties then became reconciled and lived together until September, 1953, when the husband left the wife to live with another woman with whom he had been living ever since. The wife made an application under r. 40 of the Matrimonial Causes Rules, 1950, for leave to apply for the decree nisi to be made absolute. Her application was supported by an affidavit in which she set out the facts, and by the affidavit of an inquiry agent as to the subsequent adultery. Notice of the new charge of adultery was given both to the husband and the woman with whom he was alleged to be living, and copies of the affidavits were served upon them. Written statements from both were before the court admitting the adultery and stating that they wished to take no part in

the proceedings. The matter came before Willmer, J., on 5th December, 1956, who asked for the assistance of the Queen's Proctor. At the resumed hearing the court was informed that the Queen's Proctor had ascertained no facts running counter to those put before the court by the wife.

WILLMER, J., said that it was submitted that the present case was completely covered by his own decision in *E. v. E.* [1950] P. 232, and that he ought now to allow application to be made for decree absolute. He shared with counsel for the Queen's Proctor the difficulty of understanding why provision was not made in the rules for dealing with this kind of eventuality. That was a matter on which he had commented in the course of his judgment in *E. v. E.*, *supra*, when he said that the fact that the rules of court made no provision for dealing with this sort of case was much to be deplored, and suggested that opportunity might be taken of considering whether some amendment of the rules might be required. No amendment had in fact been made as yet, and the area of inquiry in a case such as the present was something in the nature of "a procedural desert." It was not a very satisfactory way of dealing with the sort of problem that had arisen in such cases. Having regard to the assurance that had been given to the court that the Queen's Proctor had been unable to ascertain any relevant facts other than those disclosed by the wife, he (his lordship) had not thought it necessary to require oral evidence from the wife: it would have been a useless formality, since it was not possible to think what further questions one would have been able to ask her, seeing that she had so fully and fairly set out her story in her affidavit. But if the present method of procedure were to become a normal form of procedure, he would take the view that, in the absence of special circumstances such as existed in the present case, the petitioner ought to go into the witness box and tell the story in full, in exactly the same way as on an original petition. [His lordship then held that the original adultery which had been fully condoned was revived by the husband's subsequent desertion and adultery and that, in all the circumstances, the wife's delay in making her application had not been unreasonable, and granted her leave to apply for the decree nisi to be made absolute.]

APPEARANCES: Maurice Ahern (J. Rothwell Dyson & Co); Roger Ormrod (The Queen's Proctor).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [1 W.L.R. 451]

Court of Criminal Appeal

DEMANDING MONEY WITH MENACES WITH INTENT TO STEAL: TO BE TRIED AT ASSIZES

R. v. Hacker

Lord Goddard, C.J., Cassels and Hinchcliffe, JJ.

11th February, 1957

Application for leave to appeal against conviction and sentence.

The applicant was committed for trial at Andover Borough Quarter Sessions on a charge of demanding with menaces, between 1st and 31st May, 1956, at Basingstoke, Hampshire, the sum of £300 of one Victor Alexander Simmons with intent to steal the same, contrary to s. 30 of the Larceny Act, 1916. He was convicted and sentenced to four years imprisonment. He applied for leave to appeal against conviction and sentence.

LORD GODDARD, C.J., said that it was impossible to find any ground on which leave to appeal could be given. The applicant was tried at the Andover Borough Quarter Sessions, being sent there under s. 10 (1) of the Magistrates' Courts Act, 1952, which enabled him to be sent to any convenient court if the assizes were not being held at any particular time. The court desired to say that the case was admirably conducted by the recorder, and his summing-up was as good as could be desired, but, generally speaking, a case of this gravity, blackmail, ought not to go to quarter sessions; it ought to be sent to the assizes. It was true that this was not an offence under s. 29 of the Larceny Act, 1916, which imposed a maximum sentence of imprisonment for life; but an offence under s. 30 for which five years' imprisonment was the maximum. It was to be hoped that magistrates would take note that as a general rule charges of blackmail ought to be sent to the assizes and not quarter sessions, unless there was some very compelling reason. Application dismissed.

[Reported by F. R. DRYMOND, Esq., Barrister-at-Law] [1 W.L.R. 455]

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

Northern Ireland (Compensation for Compulsory Purchase) Bill [H.C.]	[18th February.
Rating and Valuation Bill [H.C.]	[21st February.

Read Second Time :—

Dentists Bill [H.L.]	[19th February.
Homicide Bill [H.C.]	[21st February.
Liverpool Corporation Bill [H.L.]	[20th February.
Magistrates' Courts Bill [H.L.]	[19th February.

Read Third Time :—

Cinematograph Films Bill [H.L.]	[19th February.
Consolidated Fund Bill [H.C.]	[21st February.

In Committee :—

Shops Bill [H.L.]	[18th February.
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HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

Children and Young Persons (Registered Clubs) Bill [H.C.]	[20th February.
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To amend the law in England and Wales in respect of the supply of intoxicating liquor to children and young persons in registered clubs and to prohibit their entry into, and their employment in, such clubs during permitted hours.

Read Second Time :—

Advertisements (Hire-Purchase) Bill [H.C.]	[22nd February.
Barclays Bank D.C.O. Bill [H.C.]	[19th February.
Cattedown Wharves Bill [H.C.]	[19th February.
City of London (Various Powers) Bill [H.C.]	[19th February.
Croydon Corporation Bill [H.C.]	[21st February.
Dartford Tunnel Bill [H.C.]	[20th February.
Housing and Town Development (Scotland) Bill [H.C.]	[18th February.
Local Government (Promotion of Bills) Bill [H.C.]	[22nd February.
Marine Society Bill [H.C.]	[19th February.
Portslade and Southwick Outfall Sewerage Board Bill [H.C.]	[20th February.
Public Trustee (Fees) Bill [H.L.]	[20th February.
Sunderland Corporation Bill [H.C.]	[19th February.
Tamar Bridge Bill [H.C.]	[20th February.
University of Exeter Bill [H.C.]	[19th February.
Whitstable Harbour Bill [H.C.]	[19th February.
Workington Harbour and Dock (Transfer) Bill [H.C.]	[20th February.

Read Third Time :—

Patents Bill [H.L.]	[20th February.
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B. QUESTIONS

RENT TRIBUNALS

Mr. BROOKE said that the last memorandum of instruction to rent tribunals as to the ascertainment of reasonable rents had been issued in August, 1950. [12th February.

PUBLIC RECORD OFFICE (LEGISLATION)

Mr. POWELL said that legislation was in preparation to permit the transfer of responsibility for the Public Record Office to the Lord Chancellor and for the appointment of an official head of the Public Record Office with the title of Keeper of the Records. [14th February.

CIVIL SERVANTS (INJURY WARRANT, 1952)

Asked what provision was made for compensation or pension for a civil servant and his dependants in the event of his injury

or death whilst travelling on duty, Mr. POWELL said that the Injury Warrant, 1952, framed under s. 41 of the Superannuation Act, 1949, provided a scheme of compensation for non-industrial civil servants injured or killed on duty. [14th February.

AUCTIONS (BIDDING AGREEMENTS) ACT, 1927

The ATTORNEY-GENERAL said there had been no proceedings, nor had he been asked for his consent to any proceedings, under the above-mentioned statute. The difficulty lay in securing evidence sufficient to justify a prosecution. [18th February.

APPEAL CASES (MAKING AN AFFRAY)

Asked whether, in view of the decision of the Court of Criminal Appeal in *R. v. Sharp* and *R. v. Johnson*, he would introduce legislation to enable the courts to deal effectively with those convicted of making an affray, instead of having to rely on a statute of Edward III enabling the courts to do no more than bind over the offenders as blemishers of the peace, Mr. R. A. BUTLER said that in this case an appeal against conviction of making an affray had succeeded on the ground of misdirection of the jury and the conviction has been quashed. The members of the Court of Criminal Appeal had then exercised their powers as justices of the peace to bind the appellants over to keep the peace. The case afforded no ground for thinking that the powers of courts to deal with persons convicted of making an affray were inadequate. [21st February.

COPYRIGHT LAW

Sir DAVID ECCLES said that he hoped that, within the next few months, the preliminary work on Regulations, Rules and Orders in Council necessary to bring into force the Copyright Act, 1956, would be completed. He proposed to bring the Act into force immediately thereafter. [21st February.

WAGES (PAYMENT BY CHEQUE)

Mr. IAIN MACLEOD said that in present circumstances he had decided not to proceed with legislation enabling wages to be paid by cheque. [21st February.

STATUTORY INSTRUMENTS

- County of London Justices** (Jurisdiction) Order, 1957. (S.I. 1957 No. 211.) 6d.
- Dumbarton** (Loch Lomond) Water Order, 1957. (S.I. 1957 No. 209 (S. 7).) 5d.
- East of Snaith — York — Thirsk — Stockton-on-Tees — Sunderland Trunk Road** (Shotton Diversion) Order, 1957. (S.I. 1957 No. 198.) 5d.
- Education (Scotland) Act, 1946** (Commencement No. 3) Order, 1957. (S.I. 1957 No. 224 (C. 4) (S. 8).)
- Folkestone — Brighton — Southampton — Dorchester — Honiton Trunk Road** (The Strand, Rye, Diversion) Order, 1957. (S.I. 1957 No. 200.) 5d.
- Foreign Compensation** (Financial Provisions) Order, 1957. (S.I. 1957 No. 233.) 5d.
- Fugitive Offenders Act, 1881** (Application) Order, 1957. (S.I. 1957 No. 234.) 5d.
- Increase of Pensions** (India, Pakistan and Burma) Rules, 1957. (S.I. 1957 No. 223.) 5d.
- Liverpool** Water Order, 1957. (S.I. 1957 No. 205.)
- London Traffic** (Prescribed Routes) (Deptford) (No. 2) Regulations, 1957. (S.I. 1957 No. 215.)
- London Traffic** (Prescribed Routes) (Greenwich) Regulations, 1957. (S.I. 1957 No. 216.)
- London Traffic** (Prescribed Routes) (Hayes and Harlington) Regulations, 1957. (S.I. 1957 No. 217.)
- London Traffic** (Prescribed Routes) (Lambeth) Regulations, 1957. (S.I. 1957 No. 218.) 5d.
- London Traffic** (Prescribed Routes) (St. Marylebone) Regulations, 1957. (S.I. 1957 No. 219.) 5d.
- London Traffic** (Prescribed Routes) (Woolwich) Regulations, 1957. (S.I. 1957 No. 220.) 5d.
- London Traffic** (Prohibition of Waiting) (Beaconsfield) Regulations, 1957. (S.I. 1957 No. 236.) 5d.
- Minor Licence Duties** (Transfer to Local Authorities) (Amendment) Order, 1957. (S.I. 1957 No. 194.)

National Health Service (General Dental Services) Amendment Regulations, 1957. (S.I. 1957 No. 229.) 9d.

Poole Water Order, 1957. (S.I. 1957 No. 206.) 5d.

Retention of a Cable and a Pipe under a Highway (Anglesey) (No. 1) Order, 1957. (S.I. 1957 No. 210.) 5d.

Retention of Cables, Mains and Pipes under Highways (Cornwall) (No. 1) Order, 1957. (S.I. 1957 No. 193.) 5d.

Road Traffic Act, 1956 (Commencement No. 4) Order, 1957. (S.I. 1957 No. 185 (C. 3).) 5d.

This order appoints 1st March, 1957, as the commencement date for s. 4 (6) (from the words "and in subsection (7)" to the end of the subsection), s. 17, Sched. VIII, para. 34 (except sub-para. (6)) and certain repeals in Sched. IX affecting s. 1 of the Road Traffic Act, 1934, and Sched. III, Pt. I, of the Trunk Roads Act, 1936. The 1st April, 1957, is fixed as the commencement date for s. 42 and Sched. VII; and 1st July, 1957, for the coming into operation of s. 4 (2) (8) (9) (10) and an associated repeal in Sched. IX affecting s. 1 (4) of the Road Traffic Act, 1934.

Safeguarding of Industries (Exemption) (No. 2) Order, 1957. (S.I. 1957 No. 195.) 7d.

Stopping up of Highways (Caernarvonshire) (No. 1) Order, 1957. (S.I. 1957 No. 201.) 5d.

Stopping up of Highways (Carmarthenshire) (No. 1) Order, 1957. (S.I. 1957 No. 226.) 5d.

Stopping up of Highways (Devon) (No. 3) Order, 1957. (S.I. 1957 No. 183.) 5d.

Stopping up of Highways (Gloucestershire) (No. 1) Order, 1957. (S.I. 1957 No. 182.) 5d.

Stopping up of Highways (Lincolnshire—Parts of Lindsey) (No. 1) Order, 1957. (S.I. 1957 No. 199.) 5d.

Stopping up of Highways (Nottinghamshire) (No. 1) Order, 1957. (S.I. 1957 No. 202.) 5d.

Stopping up of Highways (Portsmouth) (No. 2) Order, 1957. (S.I. 1957 No. 203.) 5d.

Stopping up of Highways (Warwickshire) (No. 2) Order, 1957. (S.I. 1957 No. 184.) 5d.

Treasury (Loans to Local Authorities) (Interest) Minute, 1957. (S.I. 1957 No. 230.) 5d.

Treasury (Loans to Persons other than Local Authorities) (Interest) Minute, 1957. (S.I. 1957 No. 231.) 5d.

Tuberculosis (North of Scotland Eradication Area) Order, 1957. (S.I. 1957 No. 251 (S. 10).) 5d.

Wages Regulation (Dressmaking and Women's Light Clothing) (Scotland) Order, 1957. (S.I. 1957 No. 181.) 8d.

Wages Regulation (Laundry) (Amendment) Order, 1957. (S.I. 1957 No. 225.) 5d.

Wages Regulation (Retail Bespoke Tailoring) (England and Wales) Order, 1957. (S.I. 1957 No. 208.) 9d.

West of Slough—West of Maidenhead Special Road Scheme, 1957. (S.I. 1957 No. 192.) 6d.

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

BOOKS RECEIVED

Hanson's Death Duties. Supplement to Tenth Edition (to 1st December, 1956). By HENRY E. SMITH, LL.B. (Lond.), Assistant Controller of Death Duties. pp. v and 37. 1957. London: Sweet & Maxwell, Ltd. 8s. 6d. net.

Fraud in Equity. A Study in English and Irish Law. By L. A. SHERIDAN, LL.B., Ph.D., of Lincoln's Inn, Barrister-at-Law. pp. xliii and (with Index) 235. 1957. London: Sir Isaac Pitman & Sons, Ltd. £2 net.

The County Court Pleader with Precedents of Claims and Defences. Third Edition. By E. DENNIS SMITH, LL.M., of Gray's Inn and the Oxford Circuit, Barrister-at-Law. pp. lxiiv and (with Index) 711. 1957. London: Sweet & Maxwell, Ltd. £3 10s. net.

Jennings' Law of Food and Drugs. Second Edition. By The Hon. GERALD PONSONBY, M.A., of the Middle Temple and Oxford Circuit, Barrister-at-Law. pp. xxxviii and (with Index) 392. 1957. London: Charles Knight & Co., Ltd. £2 15s. net.

Rayden's Practice and Law in the Divorce Division. Third Cumulative Supplement to Sixth Edition. By JOSEPH JACKSON, M.A., LL.B. (Cantab.), LL.M. (Lond.), of the Middle Temple and the South-Eastern Circuit, Barrister-at-Law, and D. H. COLGATE, LL.B. (Lond.), of the Probate and Divorce Registry. pp. xx and 162. 1957. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

Medical Negligence. By The Right Hon. LORD NATHAN, P.C., a Solicitor of the Supreme Court, Chairman of the Board of Governors of Westminster Hospital. With the Collaboration of ANTHONY R. BARROWCLOUGH, B.A., of the Inner Temple, Barrister-at-Law. pp. xxxii and (with Index) 218. 1957. London: Butterworth & Co. (Publishers), Ltd. £1 15s. net.

The Great World and Timothy Colt. By LOUIS AUCHINCLOSS. pp. 285. 1956. London: Victor Gollancz, Ltd. 15s. net.

The General Principles of English Law. By W. F. FRANK, LL.B., B.Com., M.Sc. (Econ.), Dr. Jur. pp. (with Index) 194. 1957. London: George G. Harrap & Co., Ltd. 10s. 6d. net.

Much in Evidence. By HENRY CECIL. pp. 192. 1957. London: Michael Joseph, Ltd. 12s. 6d. net.

The Law in Action. A Series of Broadcast Talks. Volume 2. With a Foreword by The Rt. Hon. Sir ALFRED DENNING. Edited for Publication by R. E. MEGARRY, Q.C. pp. viii and 134. 1957. London: Stevens & Sons, Ltd. 10s. net.

One Thousand Questions and Answers on Company Law. By FRANK H. JONES, F.A.C.C.A., A.C.I.S. In collaboration with RONALD DAVIES, M.A., Barrister-at-Law. 1956. London: Jordan & Sons, Ltd. £1 7s. 6d. net.

The Copyright Act, 1956. By D. H. MERVYN DAVIES, M.C., LL.B., of Lincoln's Inn, Barrister-at-Law. pp. xii and (with Index) 135. 1957. London: Sweet & Maxwell, Ltd. £1 1s. net.

NOTES AND NEWS

Miscellaneous

DEVELOPMENT PLANS

[See also p. 200, ante]

THE CITY AND COUNTY OF KINGSTON UPON HULL DEVELOPMENT PLAN

Proposals for alterations or additions to the above development plan were on 12th February, 1957, submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the under-mentioned district. A certified copy of the proposals as submitted has been deposited for public

inspection at the Guildhall, Alfred Gelder Street, Kingston upon Hull (Room 39). The copy of the proposals so deposited together with copies or relevant extracts of the development plan are available for inspection free of charge by all persons interested at the place mentioned above between the hours of 10 a.m. and 5 p.m. on Mondays to Fridays and between the hours of 10 a.m. and 12 noon on Saturdays. Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 31st March, 1957, and any such objection or representation should state the grounds on which

it is made. Persons making an objection or representation may register their names and addresses with the Planning Authority for the City and County of Kingston upon Hull and will then be entitled to receive notice of any amendment to the development plan made as a result of the proposals.

The proposals relate to the undermentioned district:—

The area bounded on the north by Boothferry Road on the south by Hessle Road on the east by Pickering Road and on the west by the county borough boundary.

DORSET DEVELOPMENT PLAN APPROVED

The Minister of Housing and Local Government has approved with modifications the development plan for the County of Dorset. The plan, as approved, will be deposited in the County Hall, Dorchester, for inspection by the public.

ROYAL COMMISSION ON COMMON LAND—FUTURE PROGRAMME

The Royal Commission on Common Land will hold the following meetings in the next three months:—

6th March, 11 a.m. to 1 p.m. Witness: The Institute (a body of counsel specialising in conveyancing work); 2.30 p.m. Witness: Mr. G. H. Newsom, Q.C. (Mr. Newsom may be followed by one other witness); 7th March, 11 a.m. to 1 p.m. Witness: British Waterworks Association, followed by Lieut.-Col. L. F. Smeathman, formerly Clerk to the Boxmoor Trust; 2.30 p.m. Witness: Charity Commission followed by Ministry of Education; 20th March, 11 a.m. to 1 p.m.; 2.30 p.m. Witness: Lord Merthyr of Senghennydd, to be followed by other witnesses to be announced later. All the above meetings will be held at 26 Sussex Place, Regent's Park, London, N.W.1. 30th April, 10.30 a.m. to 12.30 p.m. and 2.30 p.m. to 4.30 p.m., at the Diocesan Conference Room, Diocesan House, Palace Gate, Exeter, Devon. Witnesses will include the Dartmoor Commoners' Association and the Dartmoor Preservation Association. 2nd May, 10.30 a.m. to 12.30 p.m. (approximately), at The Shire Hall, Taunton, Somerset. Witnesses will include the Friends of Quantock and the Quantock (1926) Committee. As already announced, the Royal Commission has fixed 28th February, 1957, as the closing date for the receipt of written evidence.

The Croydon Rent Tribunal will move from their present office at 8 Wellesley Road, Croydon, Surrey, to 36 Sydenham Road, Croydon, on Monday, 4th March, 1957. The telephone number will remain the same—Croydon 0584.

THE SOLICITORS ACTS, 1932 to 1941

On 31st January, 1957, an Order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that the name of FRANK THOMAS HENRY PIERRE, of No. 6 Meard Street, Soho, London, W.1, and No. 93 Chancery Lane, London, W.C.2, be struck off the Roll of Solicitors of the Supreme Court, and that he do pay to the applicant his costs of and incidental to the application and inquiry. Upon the application of the said Frank Thomas Henry Pierre the Committee directed that the filing of the Findings and Order with the Registrar of Solicitors be suspended during the period allowed for an appeal and, in the event of an appeal being lodged, until the hearing and determination of such appeal. The said Frank Thomas Henry Pierre did not appeal from the said Order which was filed with the Registrar on 11th February, 1957.

The President of The Law Society, Sir Edwin Herbert, gave a luncheon party on 25th February at 60 Carey Street, Lincoln's Inn. The guests were: Sir Francis Glyn, Sir William Haley, Sir George Gater, Sir Henry Hancock, Mr. Justice Wynn Parry, Sir Dingwall Bateson, Sir Bernard Blatch and Mr. Thomas G. Lund.

PRIVATE INTERNATIONAL LAW COMMITTEE

The Lord Chancellor has asked the Private International Law Committee: (1) to consider the Draft Convention on Monetary Law approved by the International Law Association at its Forty-seventh Conference in 1956, and to recommend what action Her Majesty's Government should take thereon; (2) to recommend what alterations, if any, are desirable in the rules of the private international law of the United Kingdom relating to the formal validity of wills.

BEAUTIES OF THE QUANTOCKS TO BE PRESERVED: DESIGNATION ORDER CONFIRMED

The first part of England to be established as "an area of outstanding natural beauty" is the Quantock Hills, Somerset. Like the Gower Peninsula in Wales, it is the subject of an order made by the National Parks Commission under the National Parks and Access to the Countryside Act, 1949, and confirmed by the Minister of Housing and Local Government. The effect of the order is to place upon the local planning authority, Somerset County Council, the special responsibility of preserving and enhancing the natural beauty of the landscape. Government grants at the rate of 75 per cent. are available towards the cost of treating derelict land, tree planting and preservation, and removing disfigurements. Grants are also available towards expenditure incurred in making agreements with landowners for public access to open country, and in appointing wardens. Designation does not of itself provide any additional right of access to private land.

Wills and Bequests

Mr. R. G. Church, solicitor, of Worthing, left £31,884.

SOCIETIES

At the annual meeting of WORTHING LAW SOCIETY at Warnes Hotel, Worthing, on 7th February, the following officers were elected: President, Mr. H. W. A. Clifford; Vice-President, Mr. R. Cushing; Honorary Treasurer, Mr. T. E. Bangor-Jones; Honorary Secretary, Mr. R. H. W. Pearless; committee, Messrs. H. T. Boorne, C. I'A. Carr, W. M. Cheale, A. Cobby, F. H. Edwards, W. F. S. Tapner and E. G. Townsend.

The 86th annual general meeting of the NEWCASTLE UPON TYNE INCORPORATED LAW SOCIETY, being the 130th anniversary of its institution as the Newcastle upon Tyne and Gateshead Law Society, was held at the Society's Library, Newcastle upon Tyne, on 28th January, 1957, Mr. S. G. March, T.D., the President of the Society, being in the chair.

In moving the adoption of the report, the President made special reference to Mr. Alan Broderick Thompson, who had recently retired from membership of the Council of The Law Society, and said that it was due to him and to his predecessor, Sir William Gibson, who was present at the meeting, that the Society was held in such high regard. The record of past and present members of the profession in the north of England had now been brought up to date and it was possible by reference to it to trace the papers of nearly every defunct firm. The Society's rooms had been entirely redecorated, relighted and reheated and the Committee room refurbished.

The following officers were elected: President, Mr. Douglas Elliott Braithwaite; Vice-President, Mr. George Robert Hodnet; Hon. Treasurer, Mr. Stanley Grenville March; Hon. Secretary, Mr. Thomas Milnes Harbottle; Hon. Librarian, Mr. Philip Standring Layne; Committee, Messrs. J. Atkinson, W. N. Craigs, H. C. Ferens, W. H. Gibson, V. H. Jackson, W. S. Mitcalfe, H. F. Rennoldson, E. Richardson, R. L. Richmond, G. Scott, A. B. Thompson and J. G. Thompson.

The annual dinner of the Society was held at the Old Assembly Rooms, Newcastle upon Tyne, on 24th January, 1957. After a reception by the President of the Society, Mr. S. G. March, T.D., who was accompanied by the President of The Law Society,

Sir Edwin Herbert, K.B.E., 348 sat down to dinner. The toast of "The Law Society" was proposed by Mr. E. N. Robinson, LL.B., and replied to by Sir Edwin Herbert. The toast of "The Guests" was proposed by Mr. David H. Davies, LL.B., and responded to by Mr. Rudolph Lyons, Q.C., the newly appointed Recorder of the City of Newcastle upon Tyne. Amongst those also present were Mr. Justice Diplock, His Honour Judge Cohen, the Provost of Newcastle upon Tyne, the Dean of the Faculty of Law, Durham University, and the Presidents of the Sunderland and of the Durham and North Yorkshire Law Societies. The Society's silver graced the table, including the antique snuff boxes provided for the President and Vice-President respectively.

THE SOLICITORS' ARTICLED CLERKS' SOCIETY announces the following programme for March: 7th March: Scottish Reels at The Law Society's Hall, 6.30 p.m. Members 1s., guests 1s. 6d.; 14th March: Talk by Sir Charles Norton, M.B.E., M.C., a former president of The Law Society and an honorary vice-president of S.A.C.S., on the subject of his recent tour of the law societies in South, South-West, Central and East Africa. A colour film and slides will be shown—6 p.m. for 6.30 p.m.—in the Law Society's Hall; 19th March: Pearl Assurance Company. By kind invitation of the debating club of the above company a S.A.C.S. team will compete in the annual

general knowledge contest to be held at Conway Hall, Red Lion Square, London, W.C.1, at 6 p.m.; 20th March: New Members' Evening at The Law Society's Hall. Mr. T. G. Lund, C.B.E., Secretary of The Law Society, will be present to give an informal talk on "Professional Etiquette." 6 p.m.; 26th March: Dinner Debate. The society is holding a dinner debate at a restaurant in Soho, motions for discussion being drawn from a hat, 5s. per head; 29th March: Spring Dance. The society's spring dance will be held at The Law Society's Hall from 7.30 p.m. until 11.30 p.m. Tickets price 4s. each may be obtained from the dance secretary, c/o the society's address, or from any member of the committee; 6th March: Rugger match, S.A.C.S. v. Birmingham Law Students (home). Will anyone who is interested in playing squash please contact the sports secretary, Peter Wall, c/o the society's address, as several matches have been arranged for March.

THE UNITED LAW DEBATING SOCIETY announces the following debates for March, to be held, except where otherwise stated, in Gray's Inn Common Room, at 7.30 p.m. 4th March: "This House welcomes the Rent Restrictions Bill." 11th March: Moot before Pearson, J. 18th March: "This House considers that nationalism is to be deplored and internationalism cultivated" (a joint debate to be held with the Sylvan Debating Club, at 6.30 p.m., at Swedenborg House, 20-21 Bloomsbury Way, near Holborn Circus); and 25th March: "This House would welcome a written constitution for Great Britain."

OBITUARY

ALD. A. S. BRIGHT

Alderman Alfred Stanley Bright, solicitor, for many years a member of the Nottingham City Council, died on 12th February, aged 71. He became Under-Sheriff for the city in 1928 and was admitted in 1910.

MR. E. EVERSHERD

Mr. Edward Eversherd, retired solicitor, of Birmingham, the uncle of the Master of the Rolls, has died at the age of 90. He was admitted in 1893.

MR. A. FARNSWORTH

Mr. Albert Farnsworth, LL.D., Ph.D., F.R.Hist.S., late senior Inspector of Taxes, died on 29th January.

MR. J. R. FARRAR

Mr. John Riley Farrar, retired solicitor, of Halifax, died on 12th February, aged 95. He was Registrar at Halifax County Court for a short period after many years as deputy Registrar. He was admitted in 1882.

COL. H. D. P. FRANCIS

Colonel Hugh Douglas Peregrine Francis, C.B.E., M.C., T.D., solicitor, of London Wall, E.C.2, died at sea on 7th February, aged 74. He was admitted in 1908.

MR. W. E. HAMLIN

Mr. William Ernest Hamlin, solicitor, of Lincoln's Inn, Wimbledon and Surbiton, died on 22nd February, aged 76. Admitted in 1902, he was a former Mayor of Wimbledon.

MR. J. HARKER

Mr. John Harker, solicitor, of Kirkby Stephen, Westmorland, and clerk to the district council, died recently, aged 75. He was admitted in 1904.

MR. F. W. HARVEY

Mr. Frederick William Harvey, D.C.M., retired solicitor, of Lydney, Gloucestershire, has died, aged 69. While on active service in the Great War, and later as a prisoner of war, he established himself as the poet of his native county, and was the author of a number of books of verse and one of prose. He was admitted in 1912.

MR. E. NEWTON

Mr. Edward Newton, solicitor, of Old Jewry, London, E.C.2, died on 25th February, aged 80. He was admitted in 1917.

MR. R. T. OUTEN

Mr. Roland Thomas Outen, solicitor, of Throgmorton Avenue, London, E.C.2, and chairman of the Fairey Aviation Company, Ltd., died on 9th February, aged 56. He was a member of the Law Reform Committee and a Past Master of the City of London Solicitors' Company. He was admitted in 1924.

MR. E. S. ROFFEY

Mr. Edgar Stuart Roffey, C.I.E., solicitor, late of Assam, died on 7th February, at Swanage, aged 81. He was admitted in 1898 and five years later became an attorney of the Calcutta High Court. He was a member of the Assam Council from 1925-35.

MR. L. B. WALLWORK

Mr. Leo Bernard Wallwork, solicitor, of Chorley, Lancs., died on 4th February, aged 64. He was admitted in 1919.

MR. V. S. WOOD

Mr. Vernon Spencer Wood, solicitor, of Gracechurch Street, London, E.C.3, Bentineck Street, London, W.1, Manchester, Liverpool, Whitehaven, Newcastle and Glasgow, died on 13th February, aged 76. He was a justice of the peace for Surrey and was admitted in 1905.

MR. F. WRIGHT

Mr. Frank Wright, managing clerk of Messrs. William Irons and Son, solicitors, of Sheffield, for thirty years, died on 12th February, aged 70.

MR. R. YATES

Mr. Richard Yates, retired solicitor, of Liverpool, died recently, aged 89. He was admitted in 1893.

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